IN THE SUPREME COURT OF THE UNITED STATES

MAY TERM, 1903.

ELMIRA KNEPPER, APPELLANT,

vs.

JOHN A. SANDS, APPELLEE.

PETITION FOR WRIT OF CERTIORARI REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT TO CERTIFY TO THE SUPREME COURT FOR ITS DETERMINATION THE CASE OF ELMIRA KNEPPER, APPELLANT VS. JOHN A. SANDS, APPELLEE.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES.

1. The petition of Elmira Knepper respectfully shows to this honorable court that in the cause above entitled on the 18th day of March, 1901, there was filed in the office of the clerk of the United States Circuit court in and for the Northern district of Iowa the Bill in Equity of the appellee, John A. Sands, which said bill is found on page one of the certified transcript of the proceedings in said cause, which is hereto attached and made a part hereof.

2. That on the 6th day of May, 1901, there was filed in the office of the clerk of the Circuit court in and for said district the demurrer of appellant to the bill of appellee, which said demurrer is found on page 31 of the certified transcript of the proceedings in said cause, which is attached hereto and made a part hereof.

3. That on the 30th and 31st days of August, 1901, said cause was submitted to the Circuit court of the United States in and for said district upon the bill and demurrer filed in said cause and by the said court taken under advisement.

4. That on the 6th day of September, 1901, there was filed in the office of the clerk of said court the opinion of

the court in said cause, and afterwards on said 6th day of September, 1901, and first day of October, 1901, an order and judgment by said court were made overruling the demurrer of appellant, said opinion and order and judgment being found on pages 33 and 50 respectively of the certified transcript of the record in said cause hereto attached and made a part hereof.

5. That on the second day of December, 1901, there was filed in the office of the clerk of said Circuit court the election in writing of the appellant not to plead further in said cause but to stand upon the demurrer filed in said cause, said election being found on page 50 of the certified transcript of the proceedings in said cause hereto attached.

6. That on the 10th day of December, 1901, a decree was entered in said cause on page 135 of volume 3 of the records of said court granting the prayer in the bill of appellee and granting judgment against the appellant for the costs of said action, said decree being found on page 51 of the certified transcript of the proceedings in said cause hereto attached.

7. That the appellant duly excepted at the time to the various rulings, orders and decrees of said court rendered in favor of the appellee.

8. That on the 17th day of March, 1902, there was filed in the office of the clerk of said court the petition of appellant for appeal, an assignment of errors and bond for costs, said petition, assignment and bond being found on page 52 of the certified transcript of the proceedings in said cause hereto attached.

9. That said appeal was on the 15th day of March, 1902, allowed by the Hon. O. P. Shiras, Judge of said court.

10. That notice of said appeal was served on the appellee on the 19th day of March, 1902, and that on April 28, 1902, a duly certified transcript of the record in said cause, together with the original citation and return thereon, was filed in the office of the clerk of the Circuit Court of Appeals of the United States for the Eighth district.

11. That on the 11th day of December, 1902, said cause was submitted in said Circuit Court of Appeals of the United States for the Eighth district, after argument by counsel for appellant and appellee.

12. That on the 25th day of February, 1903, the said Circuit Court of Appeals certified certain questions to the Supreme Court of the United States, said order and ques-

tions certified being found on page 62 of the certified transcript of the proceedings in said cause hereto attached.

13. A certified copy of the entire record of said cause in said Circuit Court of Appeals is herewith furnished as part of this application in conformity with rule 37 of this honorable court relative to cases from Circuit Court of Appeals.

14. Your petitioner further represents that the present case is one in which it is proper for this court to issue a writ of certiorari, for the following reasons, among others:

I. Because the questions of law involved herein have not been passed on by this court.

II. Because the public interests and the interests of jurisprudence require the decision of this court upon the questions of law involved herein.

III. Because, in view of the large number of persons holding land under and by virtue of the grant to the state of Iowa for the railroad named therein, and because of the uncertainty to the title of said lands, said questions are of sufficient general and material importance and interest as to make it necessary that they should be determined by the court of last resort.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth circuit, commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals, in said cause therein entitled Elmira Knepper, appellant vs. John A. Sands, appellee No. 1751, to the end that said cause may be reviewed and determined by this court as provided in section 6 of the act of congress, entitled "An act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891.

ELMIRA KNEPPER,

By J. S. Struble

Petitioner's attorney.

STATE OF IOWA, }
Plymouth County, } ss.

I, I. S. Struble, being duly sworn on my oath do depose and say that I am the attorney for the appellant in the

above entitled cause, that I have read the foregoing petition and that the same is true to the best of my knowledge and belief, my knowledge being derived from the record in said cause and from what has taken place in my presence and hearing in the court in which this action has been heard.

J. D Struble

Sworn to before me this 21st day of May, 1903.

(Seal) D J Struble

Notary Public in and for said County and State.

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted. J D Struble

Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

In the Matter of the Petition of Elmira Knepper for a Writ of Certiorari directed to the Circuit Court of Appeals for the Eight district, to bring before the Supreme Court the case of

Elmira Knepper, Appellant

vs.

John A. Sands, Appellee.

To Messrs. J. H. King and M. B. Davis,
Counsel for Appellee:

Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of Elmira Knepper sworn to the 21st day of May, 1903, I shall move the motion hereto annexed before the Supreme court of the United States at the capitol in the city of Washington, District of Columbia, on the 1st day of June 1903, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and that I shall then and there move for such further relief in the premises as may be just.

Dated at LeMars, Iowa, May 21, 1903.

J. D. Struble

Counsel for the Appellant.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

In the Matter of the Petition of Elmira Knepper for a writ of certiorari directed to the Circuit Court of Appeals, for the Eight District, to bring before the Court the case of

Elmira Knepper, Appellant
vs.
John A. Sands Appellee.

And now comes the appellant above named, by I. S. Struble, her counsel and attorney, and moves this Court, upon a certified copy of the transcript of the record herein, and upon the annexed petition sworn to, for a writ of certiorari directed to the Circuit Court of Appeals for the Eighth Circuit to bring before this Honorable Court the case of Elmira Knepper, appellant, against John A. Sands, appellee, in which said cause certain questions have been certified to this court by said circuit court of appeals, for such proceedings therein as to this court may seem just; and for such other relief in the premises as may be just.

I. S. Struble

Counsel and Attorney for Appellant.

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Appearance for Appellant.....

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1902, of said Court begun and held at the United States Court House in the City of St. Louis, Missouri, on the first Monday of December, A. D., 1902, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, Circuit Judges:

Attest.

Seal of United States Circuit Court of Appeals Eighth Circuit.

John D. Jordan,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit

Be it remembered that heretofore, to-wit: on the twenty-third day of April A. D., 1903, a transcript of record, pursuant to an appeal allowed by the Circuit Court of the United States for the Northern District of Iowa, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Elmira Knepper was Appellant and John A. Sands was Appellee, which said transcript of record is in the words and figures following; to-wit:

Plans and proceedings in the United States
Circuit Court of Appeals for the Eighth Circuit,
at the December Term, 1902, of said Court begun
and held at the United States Court House in the
City of St. Louis, Missouri, on the first Mon-
day of December, A. D., 1902, before the Hon-
orable Henry C. Caldwell, Honorable Walter H.
Sanborn and Honorable Amos M. Thayer, Circuit
Judges.

Attest.

Seal of United States Circuit Court of Appeals Eighth Circuit.

John B. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

The following transcript of record is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Central Division.

In Equity.

No. 1.

Bill of Complaint.

Filed April 21, 1902.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Iowa, Central Division:

Your orator, John A. Brush, a citizen of the State of Ohio, and a resident of Columbus, in said State, brings this his bill of complaint against Thomas Carroll, a citizen of the State of Iowa, and a resident of Fort Dodge, in the Northern District of Iowa, and against Charles Ellis

UNITED STATES CIRCUIT COURT OF APPEALS

EIGHTH CIRCUIT.

No. 1751.

ELMIRA KNEPPER, APPELLANT,

vs.

JOHN A. SANDS, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED APRIL 28, 1902.

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1 The United States of America,
Northern District of Iowa—ss.

Pleas before the Circuit Court of the United States in and for the Northern District of Iowa, Western Division, at a term begun and holden at Sioux City in said District on the second Tuesday in October, 1900, before Hon. O. P. Shiras, Judge of the Northern District of Iowa.

John A. Sands, Complainant,
No. 199. vs.. Equity.
Elmira Knepper, Respondent.

Be it remembered, that heretofore to wit on the 18th day of March 1901, there was filed in the office of the Clerk of the United States Circuit Court in and for the Northern District of Iowa, a Bill in Equity in the above entitled cause, which Bill is in words and figures as follows, to wit:

2 In the Circuit Court of the Northern District of Iowa, Western Division, in and for the Eighth Judicial Circuit.

John A. Sands, Plaintiff,
vs.
Elmira Knepper, Defendant.

To the Honorable United States Circuit Court, holding in equity, the plaintiff states as follows:

First. That he is a citizen of the United States over the age of twenty-one years, residing in the County of O'Brien, and State of Iowa, and has a homestead right under the laws of the United States and brings this suit in his own right.

Second. The defendant is a citizen of the United States and a resident of O'Brien County, State of Iowa.

Third. The legal question herein presented and under which the plaintiff claims his right, involves the construction of the United States Statutes, especially of the land granting Act of May 12, 1864, granting certain lands to the State of Iowa, to secure the building of the railroad from Sioux City to the Minnesota State line and the disposal, resumption, adjustment, and forfeiture of said land under said grant, and by authority conferred in said grant, and also the construction of the disposal of said land to homesteaders under the public land laws of the United States and also the rights of disposal

of said lands by the United States under the Act of March 3d, 1887, to purchasers claiming to have purchased from the Sioux City and St. Paul Railway Company and now claiming the same as against the plaintiff by reason of the fourth section of the Act of March 3rd, 1887, and the questions arising by virtue of all of the above enumerated statutes and laws of the United States, and others incident thereto.

The value of the property herein claimed by the plaintiff is Eight thousand dollars ($8,000.00).

3 The plaintiff represents to the Court as follows:

That by an Act of Congress, approved May 12, 1864, the following grant of land was made to the State of Iowa, in alternate sections:

An Act for a grant of land to the State of Iowa in alternate sections, to aid in the construction of a railroad in said State.

Be it enacted in the Senate and House of Representatives of the United States of America, in Congress assembled, that there be, and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such points as the said State of Iowa may select between the Big Sioux and the West Fork of the Des Moines River; also to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction, by the most practicable route on or near the forty-third parallel of North Latitude until it shall intercept the said road running from Sioux City to the Minnesota State line, in the County of O'Brien in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said road, but, in case it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or part thereof granted as aforesaid or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement, or pre-emption has attached,

as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid; Provided, That the lands so selected shall in no case be located more than twenty miles from the lines of said roads; Provided further, That any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

Sec. 2. And be it further enacted, that the sections and parts of sections of land which by such grant shall remain to the United States within ten miles on each side of said roads shall not be sold for less than double the minimum price of public lands when sold nor shall any of said lands become subject to sale at private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid; Provided, That actual bona fide settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price; And Provided Also, that settlers under the provisions of the homestead law, who comply with the terms and requirements of said act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

4 Sec. 3. And Be it Further Enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid and no other. And the said railroads shall be, and remain public highways, for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States.

Sec. 4. And be it further enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid, and no other. And the said railroads shall be, and remain, public highways for the use of the government of the United States.

Sec. 4. And Be it Further Enacted, That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely: When the governor of said State shall certify to the Secretary of the

Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner, as a first-class railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed the ten miles as aforesaid. When the governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of lands shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented, to the State for the uses aforesaid, and none other, Provided, That if the said McGregor Western Railroad Company, or assigns shall fail to complete at least twenty miles of its said road during each and every [—] from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine; Provided Further, That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine; And Provided Further, that said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this act, and should the state fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

Sec. 5. And Be it Further Enacted, That as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

Sec. 6. And be it further enacted, That there be, and is hereby granted to the State of Minnesota, for the purpose of aiding in the construction of a railroad from St. Paul and St. Anthony via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the State, in the direction of the [Mount] of the Big Sioux River, four additional alternate sections of land per mile, to be selected upon

the same conditional restrictions and limitations, as are contained in the act of Congress entitled "An Act making a grant of land to the Territory of Minnesota, in alternate sections to aid in the construction of certain railroads in said territory and granting public lands, in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March third, eighteen hundred and fifty-seven; Provided, That the land to be so located by virtue of this section may be selected within twenty miles of the line of said road, but in no case at a greater distance therefrom.

Approved May 12, 1864.

Fourth. That on the third day of April, 1866, the State of Iowa duly accepted said grant, and on the same day conferred that portion made in aid of the construction of the said road from Sioux City to the South line of the State of Minnesota, upon the Sioux City and St. Paul Railroad Company, a corporation duly organized and existing under and by virtue of the laws of said State, said grant to said railroad company being made upon the terms, conditions and restrictions contained in the aforesaid acts of Congress.

Fifth. That said railroad company accepted said grant and entered upon the construction of said road and completed five sections of ten miles each of said road from the Minnesota State line southward and received from the State of Iowa the amount of land the company was entitled to by reason of said construction under said grant.

Sixth. That in his second bi-ennial message to the Iowa Legislature, in January, 1862, the Governor of the State of Iowa, called the attention of the legislature thereof to the failure of said railroad company to complete said road in accordance with the terms of the grant and informed the Legislature of his refusal to convey any more lands to the Railroad Company, because it had already received all the land it had earned, recommending action to be taken by the Legislature thereon in the following language:

"On May 12, 1864, Congress granted to this State certain lands to aid in the construction of a railroad from Sioux City to the south line of the State of Minnesota, at such point as the State should select between the "Big Sioux" and the "West fork of the Des Moines River." This grant was designed to aid in constructing a line from Sioux City to St. Paul, and was a virtual continuation of a branch line of the Union Pacific Railroad, contemplated by the act of the construction of that road passed in 1862, and to be built from Sioux City to some point on that railroad east of the one hundredth meridian,

By Chapter 144 of Acts of the General Assembly (Eleventh) which took effect May 20, 1866, this State accepted the grant, which was by the same general assembly conferred on the Sioux City & St. Paul R. R. Company. This company built its road from the southern line of Minnesota, in the direction of the Sioux City, as far as LeMars, at which point it intersects the Iowa Falls, and Sioux City Railroad now operated
6 by the Illinois Central Railroad Company, on which road the former company has trackage into Sioux City. Thus far the road was built in 1872, since which time the lands along the completed line for fifty miles have been certified to the company, aggregating three hundred and twenty-two thousand acres, or a little more than the amount to which the company was entitled under the Act of Congress. In 1878 the Company requested me to certify to it the remainder of the lands, amounting to between eighty-five thousand and ninety thousand acres. This I declined to do, on the ground that the Company had not complied with the terms of the grant which provided for a line from Sioux City to the south line of the State of Minnesota. Had the road been completed to Sioux City, the lands would have been certified, but I cannot be persuaded that a road terminating at LeMars can be fairly construed to have been built to Sioux City, even if the Railway Company has trackage to that place over another line, much less from Sioux City.

The Act of May, 1864, required the construction of the road within ten years after the acceptance of the grant by the State, after which the State had five years further to complete the work. By not completing the line to Sioux City within the time prescribed, it will be seen that the Sioux Clity & St. Paul Railroad Company has forfeited all its rights to the uncertified portions of the grant. It therefore, becomes the duty of the General Assembly to take such steps as may be deemed advisable for the purpose of securing the completion of the road contemplated in the Act of Congress. The original intent of the act was to make Sioux City a point on a great national highway between the Union Pacific Railroad and the Great Lakes and to give the people along the line contemplated the benefit of the facilities thus to be afforded. The General Assembly should see to it that to the best of its ability, the lands yet within the control of the public shall be utilized in order to secure the completion of the line for which they were intended."

Seventh. That the 19th General Assembly of the State of Iowa, in pursuance thereof exacted the following law, declaring the forfeiture of the lands granted and fully resuming the same, to wit:

Chapter 107.

An Act, to resume all the lands and rights conferred upon the Sioux City & St. Paul Railroad Company, by or under an Act of Congress approved May 12, A. D. 1874, to lands not heretofore earned by said company.

Whereas, by an Act of Congress approved May 12, 1864, entitled, "An Act for a grant of lands to the State of Iowa, in alternate sections to aid in the construction of a railroad in said State," certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State, to the south line of Minnesota, at such point as the said State might select, between the Big Sioux and the west fork of the Des Moines River, which grant was made to and accepted by, the State of Iowa upon the conditions, restrictions and qualifications therein named, and

Whereas, by an act of the General Assembly of the State of Iowa, approved April 3, 1866, so much of the lands, interests, rights, powers and privileges as were or might be conferred in pursuance of said acts of Congress, to aid in the construction of the aforesaid road, were disposed of, granted and conferred upon the Sioux City & St. Paul Railroad Company, and

Whereas, said Sioux City & St. Paul Company, duly
7 accepted said grant on the 20th day of September, A. D. 1866, but has failed to complete or cause to be completed any road on the line adopted therefor, from Sioux City to LeMars, in said State of Iowa, or any road in lieu thereof.

Be it Enacted by the General Assembly of the State of Iowa:

Sec. 1. That all lands, and all rights to lands, granted or intended to be granted to the Sioux City & St. Paul Railroad Company by the said acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said railroad company by a compliance with the conditions of said grant, be, and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said railroad company.

Sec. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Sioux City Journal newspaper published in the State of Iowa.

Approved March 16, 1882.

Eighth. That on the 27th day of March, 1884, the legislature of the State of Iowa relinquished to the United States

all their right and title to said lands by an act duly passed and approved; said act was as follows:

Chapter 71.

An Act to relinquish and re-convey to the United States all lands and rights to lands granted to the State of Iowa, by the Act of Congress entitled, "An Act for a grant of land to the State of Iowa in alternate sections to aid in the construction of a railroad in the State of Iowa," approved May 12, A. D. 1864, which have not been earned pursuant to the provisions of said act.

Whereas, by An Act of Congress, approved May 12, 1864, entitled "An Act for a grant of land to the State of Iowa, in alternate sections to aid in the construction of a railroad in said State" certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State to the south line of Minnesota, at such point as the State might select, between the Big Sioux and the West Fork of the Des Moines River, which grant was made to and accepted by the State of Iowa, upon the conditions, restrictions, and qualifications therein named, and

Whereas, By acts of the General Assembly of the State of Iowa, approved April 3rd, A. D. 1866, and April 20, A. D. 1866, the lands, rights, powers, duties and trusts conferred upon the State of Iowa by said Acts of Congress were duly accepted on the part of the State of Iowa; and,

Whereas, By an act of the General Assembly of the State of Iowa, approved April 3rd, A. D. 1866, so much of the lands, interests, rights, powers, and privileges as were or might be conferred upon the Sioux City & St. Paul Railroad Company; and,

Whereas, by an act of the General Assembly of the State of Iowa, approved March 16, 1882, all lands and all rights to lands granted or intended to be granted to the Sioux City & St. Paul Railroad Company by said acts of Congress and of the General Assembly of the State of Iowa, which had not been earned by said railroad company by a compliance with the conditions of said grant, were absolutely and entirely resumed by the State of Iowa, and vested in said State as absolutely as though the same had never been granted to said railroad company, and,

Whereas, It is desirable that all lands and rights to lands resumed by the State of Iowa as aforesaid, should be conveyed to and vested in the United States to the end that such lands

shall be made subject to the use of actual settlers, as provided by the acts of Congress relating thereto, now, therefore,

8 Be it Enacted: By the General Assembly of the State of Iowa:

Sec. 1. That all lands and all rights to lands resumed and intended to be resumed by the chapter one hundred and seven (107) of the acts of the Nineteenth General Assembly of the State of Iowa, are hereby relinquished and conveyed to the United States.

Sec. 2. The Governor of the State of Iowa is hereby authorized and directed to certify to the Secretary of the Interior all lands which have been heretofore patented to the State to aid in the construction of said railroad and which have not been patented by the State to the Sioux City & St. Paul Railroad Company, and the list of land so certified by the Governor shall be presumed to be the lands relinquished and conveyed by section one of this act; provided that nothing in this section contained shall be construed to apply to lands situated in counties of Dickinson and O'Brien.

Sec. 3. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register a newspaper published at Des Moines, Iowa, and the Sioux City Journal, a newspaper published at Sioux City. Approved March 27, 1884.

Took effect by publication April 2, 1884.

Ninth. That at the time of the passage of the aforesaid act of 1882, there remained of the grant to the State of Iowa, and not yet earned and not yet conveyed to the railroad company by the State of Iowa, the following, among other land, to wit:

The Northwest quarter of Section Nine, Township Ninety-five, North of Range forty-two, West of the fifth P. M. situated in O'Brien County, State of Iowa.

Tenth. That the amount of lands granted and patented to the State of Iowa, to secure the building of a railroad from Sioux City, Iowa, to the Minnesota State line and granted conditionally to the Sioux City & St. Paul Railroad by the State, and which was withheld from conveyance to the said railroad company, by the State by reason of the company's failure to build said road any further than from the Minnesota State line to LeMars, Iowa, and by reason of the failure of the company to comply with the provisions of the granting act of 1864, and held by the State under the original grant and never certified

or patented to the company and so withheld by the state at the time of the passage of the act of forfeiture and resumption hereinbefore set out,—was 85,457.40 acres, a full and complete list, by number of said land so withheld and resumed, and so forfeited being published by the Secretary of the State of Iowa in 1883, to be found on pages 94, 95, 96 and 97 of the printed Report of the Secretary of the State of Iowa for the year 1883.

These lands were the lands that the Sioux City & St. Paul Ry. Co., had demanded a conveyance of from the State and that the Governor refused to convey and referred to in his message of 1882, and which were so withheld in 1882 at the time of the passage of the resumption act and act of forfeiture by the Iowa Legislature, and were the lands referred to in said act. This list of lands, then, and now in the office of the Secretary of the State of Iowa, was all the balance of the entire grant made for the purpose of securing the building of the railroad, granted by the General Govenment to the State, and the patenting to the said railroad company by the State of all lands earned by it for the building of all the road it did build, and the refusal to patent any more, and the action of the Governor and Executive officers, and of the Legislature of said State in making and publishing the list of lands remaining unearned and unpatented to the company and still held by the state, was a full and complete adjustment of said land grant, and made by the State of Iowa through its proper and legally constituted authorities, as authorized in the granting act to the state, and said grant then was, and has since 1882 remained fully and completely adjusted, so far as the Sioux City & St. Paul Ry. Company is concerned, or any one claiming under them, or by virtue of the act of March 3rd, 1887. And plaintiff alleges and calls especial attention of the Court to the fact that the authority conferred in the granting Act of May 12, 1864, granting land to the State of Iowa, to secure the building of a railroad from Sioux City to the Minnesota State line, also conferred upon the State of Iowa, through the legislature thereof, not only the power and authority to bestow the land upon any railroad company it might select, but also authorized and empowered the State of Iowa through its legislature in terms clearly stated the right, authority and power of adjustment, forfeiture and resumption, in case of a non-compliance, together with the right after having resumed, to secure the completion of the road by the use of such lands, either by itself, or to another company, and in this, the granting act aforesaid is unlike any other granting act to any other state ever passed by Congress. Plaintiff alleges that the State of Iowa, having this authority of adjustment, forfeiture

and resumption, as to these lands herein described, exercised it fully and completely, and then in 1884 relinquished all of said lands to which the Sioux City & St. Paul Ry. Co. would have had any right to the United States.

Eleventh. The lands set out in the aforementioned list are located in the counties of Dickinson, Plymouth, Woodbury, Sioux and O'Brien, the total of the various descriptions aggregating in all 85,457.40 acres, and being distributed in said counties as follows:

In Dickinson County.—The S. E. qr. N. W. and W. 1/2 N. W. qr., Sec. 7, Twp. 98, R. 33, 113.10 acres, and nine other descriptions all in Dickinson County, Iowa, aggregating in all 4,142.86 acres.

In Plymouth County, Sec. 5, Twp. 93, R. 47, and thirty other descriptions aggregating in all 1,780.08 acres.

In Woodbury County, Sec. 11, Twp. 89, R. 44, 640 acres, and thirty other descriptions aggregating in all 14,197.25 acres.

In O'Brien County W. 1/2 S. W. qr., Sec. 7, Twp. 96, R. 39, 62.25 acres, and one hundred and nine other descriptions aggregating in all 55,297.21 acres, in which is found the following land; the northwest quarter of section 9, Township 95, range 42, W. 5th P. M., O'Brien County, Iowa, being the land involved in this suit.

In Sioux County the N. E. qr., S. E. qr., Sec. 15, Twp. 97, R. 46, 40 acres, making a total of 85,457.40 acres.

Twelfth. That no further and other list of said lands was ever made either by the State of Iowa, or by the United States, nor was any other or further adjustment of the lands ever made so far as the Sioux City & St. Paul Ry. Co., was concerned, either by the State, or by the United States nor were any of the said lands included in said list ever conveyed by the State of Iowa or by the United States, to said Sioux City & St. Paul Ry. Company or its successors or assigns or to any one
11 for their use and benefit, but has remained the permanent adjustment of the grant to said Railroad Company and that at said time in 1882, when the Governor of the State of Iowa refused to convey any of said land to the said Railroad Company and when the Iowa legislature recited the failure to complete said road in accordance with the terms and conditions of the grant and resumed the same, said railroad company had received all the lands to which it was entitled on account of the building of the road from the Minnesota State line to La Mars, in all amounting to 322,412.81 acres, which had been conveyed to it by the State as directly authorized to do so under

the grant, and the State refused to convey any more land. The land so refused to be conveyed by reason of the failure of the railroad company to construct the road was the land herein enumerated and set out and included the land in question in this suit.

Thirteenth. Plaintiff represents that for many years after the adjustment and resumption and forfeiture of said grant to the Sioux City and St. Paul Railway Company by the Act of the Iowa legislature and the officer of the State, and the relinquishment of the land herein in question by the legislature of the State of Iowa, to the general government, said land remained open, unoccupied, and unappropriated public land, and that more than three years after this resumption act and more than one year after the relinquishment act, to wit, in August, 1884, plaintiff herein settled upon said land with the open and declared purpose of taking said land as a homestead, to wit: The Northwest quarter Section 9, Township 95, Range 42, O'Brien County lands, and did erect thereon a house and break and cultivate, and fence said land, putting improvements thereon of the value of one thousand seven hundred and fifty dollars, and that he has ever since resided thereon, claiming the same as his home under the homestead laws of the United States; and that some time in 1884, he cannot remember the exact date, he tendered to the officers of the U. S. Land Office, at Des Moines, Iowa, a homestead filing for said land, with the necessary legal fees therefor, which said filing for said land was from some cause unknown to the plaintiff, refused by said office; but that he continued without hindrance to re-
12 side on said land.

Fourteenth. Plaintiff further reprersents that on the 18th day of November, 1895, the Secretary of the Interior issued a proclamation or notice, and instructions relating to the entry of said land herein described, among other lands that claimed by the plaintiff; a copy of said notice and instructions being made a part hereof, and hereto attached, marked "Exhibit A." That pursuant thereto, and on March 10, 1896, the plaintiff appeared at the Local Land Office, at Des Moines, Iowa, and tendered his homestead filing for said land, alleging his settlement, residence, and cultivation of said land, and his legal qualifications to make said entry, all in full compliance with the law, and tendered the legal and proper fee and homestead filing therefor, which filing and tender of fees the Land Office held in abeyance, pending a trial and examination of the right of all parties concerned including his own right and the claim of defendant Elmira Knepper, to purchase said land under and by virtue of an alleged contract of sale made with the Sioux City & St. Paul Ry. Co., to Elmira Knepper, to pur-

chase said land, on the 21st day of June, 1887, the defendant claiming the right by reason of said contract to purchase the same of the Government, under and by virtue of the fourth section of an Act approved March 3rd, 1887 (24 Stat. 556) even as against the homestead and settlement rights of the plaintiff herein, although defendant had never in any manner resided upon said land or cultivated the same, or in any manner attempted to comply with the homestead and settlement laws of the United States for obtaining public government land. A copy of said contract of purchase, under which the said defendant Elmira Knepper claimed the right of purchase under said section being hereto attached, marked Exhibit "B" and made a part hereof.

Fifteenth. The plaintiff alleges that said contract was made after the passage of the act of March 3rd, 1887, and that said contract and the lands affected thereby do not come within the terms of said act, nor the fourth section thereof. That title never having been in said company, nor any one for its use and benefit, the company never having earned the land, not having been entitled to the land, the time having long
13 since lapsed within which it might be earned from the State, and the State which held the title under a special grant with full power of adjustment and forfeiture, had fully adjusted the grant and forfeited and resumed the land which it held, refusing to patent the same to the company. That said land grant was legally and fully adjusted long prior to the passage of the act of March 3rd, 1887, and the railway company had received the full amount of land that it was entitled to receive, and the full amount of land that it could receive, and the time had elapsed in which it could build the road, or earn or receive any more land under the law, and that said act applied only to unadjusted land grants and only to sales made in good faith prior to the passage of the said act, and the purchase being long after all of this had been done, and defendants were bound to take notice thereof and could not in law or equity be good faith or bona fide purchasers.

The plaintiff also alleges that said contract of purchase from the Sioux City and St. Paul Railway Company made by Elmira Knepper, was void, the same being contrary to the provisions of the granting act of 1864, and without any authority of law, which act prohibited the sale, transfer, or incumbrance of said land until the same had been earned and patented to the said company which was never done, and of all of which defendant was bound to take notice. And plaintiff further alleges that under the law and facts, no sale or purchase could be made at the time it was made of the land described, whereby the purchaser could be en-

titled to the provisions of the act of March 3rd, 1887, and alleges that said Elmira Knepper purchasing claimant, was bound to take notice of the refusal of the State of Iowa to convey said land to the railroad company, and of the fact that it had already received all the land that it was entitled to receive by reason of the building of the railroad from the Minnesota State line to LeMars, Iowa, only, and was bound to take notice of the acts of Iowa Legislature declaring said land forfeited and of the relinquishment of the same to the United States in 1884, and to take notice of the failure of the company, to construct said road, as declared by the said legislative act, within the time limit of the granting act of 1864, and
14 it could not at the time of the purchase or ever, be entitled to receive said land, and that it was legally impossible for the purchasing claimant to have been a good faith innocent or bona fide purchaser.

Sixteenth. Plaintiff represents that on the 10th day of March, 1896, he appeared at the U. S. Land Office, in Des Moines, Iowa, and tendered his application, affidavits of qualification and eighteen ($18.00) dollars fees and commissions to enter said land under the homestead laws, alleging prior settlement, residence and cultivation since 1884; but that the Register and Receiver, instead of accepting said application to enter same as a homestead under his residence and qualification, issued notice fixing the date for a hearing or trial, in which all persons claiming said land were ordered to appear, and on the 20th day of March, 1896, the plaintiff herein appeared in person and with counsel and a trial was had and evidence taken and the register and receiver found and decided that plaintiff herein was entitled to said land under his homestead application, by reason of his residence, cultivation of the land, and qualifications as a homesteader therefor, the fact of his settlement in 1884, and continuous residence thereon since that time, and the cultivation of said land, and his full and complete compliance with the homestead laws of the United States relative to taking government land under said laws was fully and completely established, all of which facts as found, plaintiff alleges to be true. The said purchasing claimant, defendant herein, appealed to the Commissioner of the General Land Office, and on the 20th day of July, 1899, the Commissioner of the General Land Office of the United States, at Washington, decided that the plaintiff was entitled to said land under the homestead laws of the United States. A copy of which opinion, finding of facts, and decision thereunder, is hereto attached, marked Exhibit "C" and made a part hereof. Plaintiff herein further represents that the defendant herein further appealed from this decision to the Secretary of the Interior, and

that after hearing the question under the law and the evidence, the Secretary decided that the purchasing claimant had the right to purchase said land, by reason and by virtue of his con-
tract with the railway company, heretofore referred to
15 and marked Exhibit "B" unlawfully and without any
authority of law therefor, on the 24th day of April, 1900, reversed the action of the register and receiver, and of the Commissioner of the General Land Office, and unlawfully and without any authority of law, rejected plaintiff's application to enter said land under the homestead laws of the United States, and allowed the entry and proof of the said defendant, under his so-called purchase from the Sioux City & St. Paul Ry. Co., a copy of said decision being hereto attached marked Exhibit "D" and made a part hereof; and that in pursuance of said decision, and under the order of the Secretary of the Interior, the General Land Office is about to issue, or has already issued, a patent to said land to the said defendant as purchasing claimant; solely under said so-called contract under the fourth section of the act of March 3rd, 1887, and plaintiff alleges that said decision of the Secretary of the Interior, allowing said purchasing claimant to enter and take said land by reason of, and by virtue of said contract made with the Sioux City & St. Paul Ry. Co., aforesaid, and under the fourth section of the act of March, 1887, or any other section thereof, is contrary to law and absolutely void.

Seventeenth. And plaintiff, by reason of his long residence, as alleged, and cultivation of said land, and by reason of his homestead rights, and by reason of the premises herein stated, is entitled to have said land under the homestead laws of the United States and a patent thereto. And plaintiff alleges that the allowance of said patent to the purchasing claimant and the order for the issuance of the same, in case the same has already been issued to the defendant on said land, is all, each and singular, unlawful and contrary to law, and without authority of law.

Eighteenth. And plaintiff further alleges that he has never sold, relinquished, assigned or abandoned his said homestead claim, and that he now resides upon the said land, and has already complied with the homestead laws of the United States as to residence, cultivation, etc., and is legally entitled to said
lands under said laws, having resided thereon, in the
16 manner and form described by law, for more than five
years prior thereto, and that his proofs already made, accepted, admitted and found by the decision of the Register and Receiver, and the Commissioner of the Genral Land Office, should be accepted, and plaintiff asks that patent to said land, allowed in favor of defendant, be either declared null and void

and set aside, and the Secretary of the Interior ordered to cancel the same of the records of his office, or that the court shall issue a decree declaring that the said defendant holds the land in trust for the said plaintiff, and that said decree will order, make, and declare the full and compleete transfer of title to said land from the defendant to the plaintiff herein, and make such other and further order as to the court may seem right, legal, just, equitable and proper.

Nineteenth. Wherefore may it please your honors to grant to the plaintiff a writ of subpoena, issued out of and under the seal of this court, directed to the defendant, Elmira Knepper commanding him, at a certain day, personally to appear before your honors, and this court, and there answer all and singular the premises, and to perform such order and decree as to your Honors shall seem meet, and to allow plaintiff judgment and decree against the defendant Elmira Knepper, accordingly, and for cost of this suit; and that this order of the Secretary of the Interior, made contrary to and without authority of law, be set aside, cancelled, and declared void, and of no force and effect.

And the plaintiff further prays that in the event that this patent be not set aside from any reason, that plaintiff may have judgment against the defendant in addition to the costs of this suit for eight thousand dollars ($8,000.00) the value of said land so erroneously, unlawfully and improperly patented to the said defendant, and for such other relief as the court may seem meet and just.

KING & STERNS,
Attys. for Plaintiff.

M. B. DUNN,
Of Counsel.

17 State of Iowa,
County of O'Brien—ss.

John A. Sands, being duly sworn, upon oath deposes and says, that he has heard read the foregoing petition; that he is the plaintiff therein named, that the statements therein made from his own personal knowledge, he knows to be true, and those made from information and belief, he believes to be true, in substance and fact, so help me God.

JOHN A. SANDS.

Subscribed and sworn to before me and in my presence this 16th day of March, A. D. 1901.

[Seal] WM. H. DOWNING,
Notary Public in and for O'Brien County.

"EXHIBIT A."

6-5907 Department of the Interior,

F. General Land Office,
Washington, D. C., Nov. 18, 1895.

Register and Receiver,
Des Moines, Iowa,

Sirs: During the years 1872, 1873, and 1875, certain lands were patented to the State of Iowa, under the Act of Congress approved May 12, 1864, for the Sioux City and Saint Paul Railroad Company; said company failed to complete the construction of its road as definitely located, and the State withheld from it 85,457.40 acres of the land so patented, as not having been earned. Of the lands patented for the Sioux City Company, the Chicago, Milwaukee, and Saint Paul Company recovered 41,867.52 acres; which included a part of these lands, another part thereof was reconveyed to the United States by the State of Iowa and were restored to entry, and for the balance the United States instituted suit against the Sioux City Company for the recovery of title. That suit was decided October 21, 1895, by the Supreme Court, in favor of the United States, and said court on the same day decided that the Milwaukee Company which had been allowed to intervene as a defendant, had no interest in the lands, and that there was no foundation for a suit by said company to compel the United States to surrender any title it may have, however such title may have been acquired.

This leaves the title to the lands involved in the suit in the United States and subject to disposal by the Department.

Therefore, in order to carry their restoration to entry into effect, you will cause to be published for a period of thirty days, in some newspaper of general circulation in the vicinity of the lands, a notice that said lands, a particular description of which will be published with the notice, are restored to the public domain and will be subject to entry on a day to
18 be affixed by the notice, which shall be ninety (90) days from the date of the first publication, and that all persons claiming any part thereof under the act of March 3, 1887 (24 Stat. 556) must come forward within the ninety days immediately following the first publication, and give notice of their claims by publishing their notice of intention to make proof in accordance with the requirements of the circular of February 13, 1889 (8 L. D. 348) upon a day which shall be subsequent to that affixed for the restoration.

To the end that complications which might arise from the former practice of suspending applications for these lands may be avoided, and the [rightfuly] claimants be enabled to acquire title with as little delay as possible, I have to direct that in the notice of restoration there be inserted a notice to all prior applicants, that their applications confer no rights upon them, and that upon the day set by you for the restoration, the lands will be open to entry and disposal without regard to such applications, which shall be held by the notice to the rejected.

That all such applicants may, however, have opportunity to present new applications upon the expiration of the ninety days' notice, you will notify specially all parties shown by your records to have pending applications for these lands, of the rejection thereof, of the date of restoration, and of the necessity of presenting new applications for the protection of their rights.

In all cases of conflicting claims, you will proceed in accordance with the rules of practice in contest cases.

A list of lands to be restored by descriptive subdivisions is enclosed herein.

You will promptly forward a copy of the newspaper containing the notice of the restoration, for the information of this office.

The receiver, or disbursing officer, will pay the cost of publication and forward a copy of the notice, with proof of publication, as his voucher for the disbursement.

Very respectfully,

S. W. LAMOREAUX,
Commissioner.

Appd: HOKE SMITH, Secretary,

19 List of Lands involved in Suit of

United States,
vs.
Sioux City and St. Paul Railway Company.

Dickinson County.

	Sec.	T.	R.	Acres.
All	15	98	38	640.00
N.W. 1/4	17	"	"	160.00
				800.00

O'Brien County.

	Sec.	T.	R.	Acres.
S 1/2 N.W. 1/4 & S W 1/4	9	95	40	240.00
S W 1/4 N W 1/4	7	97	40	34.50
W 1/2	5	95	41	318.64
All	7	"	"	602.00
S E 1/4 S W 1/4 & S 1/2 N W 1/4	11	"	"	480.00
All	13	"	"	640.00
All	15	"	"	640.00
W 1/2	19	"	"	288.76
All	23	"	"	640.00
All	25	"	"	640.00
All	27	"	"	640.00
N E 1/4 N W 1/4	3	96	41	39.95
S E 1/4 N E 1/4	15	"	"	40.00
S W 1/4 S W 1/4	13	97	41	40.00
E 1/2 S W 1/4 & N E 1/4 S E 1/4	35	"	"	120.00
All	1	95	42	641.36
N 1/2 Sec. S W 1/4, N 1/2 S E 1/4 and S E 1/4 S E 1/4	5	"	"	590.82
S E 1/4 N W 1/4, W 1/2, S E 1/4, N 1/2 N E 1/4 & S e 1/4 N E 1/4	7	95	42	390.41
All	9	"	"	640.00
S 1/2 N E 1/4, S 1/2 N W 1/4 and S 1/2 Sec.	11	"	"	560.00
All	15	"	"	640.00
All	17	95	42	640.00
S E 1/4 N W 1/4, W 1/2 N W 1/4, S E 1/4 N 1/2 N E 1/4 and S E 1/4, N E 1/4	7	95	42	390.41
All	9	"	"	640.00
S 1/2 N E 1/4, S 1/2 N W 1/4 and S 1/2 Sec.	11	"	"	560.00
All	15	"	"	640.00
All	17	95	42	640.00
E 1/2 N E 1/4, W 1/2 S W 1/4, S E 1/4 S W 1/4 & S E 1/4	19	"	"	353.49
All	21	"	"	640.00
All	23	"	"	640.00
All	27	"	"	640.00
S 1/2 of	29	"	"	320.00
E 1/2 N E 1/4 & S E 1/4 N W 1/4	31	"	"	120.00
All	3	96	"	646.16
[20]				
S 1/2	5	"	"	320.00
N W 1/4 N E 1/4 & E 1/2 S E 1/4	7	"	"	120.00
All	11	95	42	640.00
All	15	95	42	640.00
W 1/2	17	"	"	320.00

	Sec.	T.	R.	Acres.
S W 1/4 N E 1/4, S E 1/4 N W 1/4 & N W 1/4 N W 1/4	19	"	"	116.17
All	23	"	"	640.00
All	29	"	"	640.00
E 1/2 S E 1/4	31	"	"	80.00
All	33	"	"	640.00
All	3	97	42	595.60
S W 1/4 N E 1/4, N E 1/4 N W 1/4 and N W 1/4 S E 1/4	7	"	"	120.00
All	9	97	42	640.00
All	17	"	"	640.00
E 1/2 N E 1/4 & N 1/2 S E 1/4	19	"	"	160.00
All	25	"	"	640.00
S 1/2	29	"	"	320.00
S E 1/4 N E 1/4 & N E 1/4 S E 1/4	31	"	"	640.00
S 1/2	33	"	"	320.00
All	35	"	"	640.00
Total				21,979.85

21 Department of the Interior,
General Land Office,

Washington, D. C., Apr. 1900.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Commissioner's letter of Nov. 18, 1895, to the Register and Receiver at Des Moines, Iowa, and of the lists of lands which accompanied it, are true and literal exemplifications from the record thereof in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington on the day and year above written.

BINGER HERMANN,
Commissioner of the Gen. Land Office.

(Copy)
22 No. 493

Land Department of the

Sioux City and St. Paul Railroad Company.

This Agreement, made this twenty-first day of June in the year 1887, between The Sioux City & St. Paul Railroad Company, and Elias F. Drake and Amherst H. Wilder, Trustees named in a certain Trust Deed, executed by said Company, and dated August 1st, 1871, of the first part, and Elmira Knepper of Sheldon, County of O'Brien, State of Iowa, of the second party,

Witnesseth, That in consideration of the stipulations herein contained, and the payments to be made as is hereinafter specified, the first party hereby agrees to sell to the second part-, the North West quarter of Section 9, in Township 95 North, of Range 42 West of the fifth principal meridian, containing according to the United States survey,———acres, be the same more or less, for the sum of twenty-one hundred and sixty dollars, on which the said second party hath paid the sum of ———dollars on account of the principal.

And the said second party in consideration of the premises, hereby agrees to pay to the said first party, at the office of the Land Department Sioux City and St. Paul Railroad Company, at St. Paul, Minnesota, the following sums of principal and interest at the several times named below:

When due	Principal	Interest	Back Int	Total	Deposit	Total	Evidence of Payment
On or be Fore Jan 1-1888		82.88		82.88	Recd	82.88	Dec 30/87 W P J L. C.
						196.00	Rec Apr 25/89 WPJ & LC
Jan 1-1889	196	156.80		352.80		156.80	Rec Feb 12/89 " " "
1890	196	141.12		337.12		420.00	Rec Jan 15/90 W P J L C
1891	196	125.44		321.44			
1892	196	109.76		305.76			
1893	196	94.08		290.08			
1894	196	78.40		274 40			
1895	196	62.72		258.72			
1896	196	47.04		243.04			
1897	196	31.36		227.36			
1898	196	15.68		211.68			

And it being mutually understood that the above premises are sold to said party for improvement, and cultivation, the said second party hereby further agrees and obligates herself and her heirs and assigns, that all improvements placed upon said premises shall remain thereon, and shall not be removed or destroyed, until final payment for said lands. And further that she will punctually pay said sums of money above specified as each of the same becomes due; and that she will regularly and seasonably pay all such taxes and assessments as may be lawfully imposed upon said premises.

23

And in case the said second party, her legal representatives or her assigns, shall pay the several sums of money aforesaid, punctually, and at the several times above limited and shall strictly and literally perform all and singular the agreements and stipulations aforesaid, according to their true tenor and intent, then the first party will make unto the said second party

her heirs or assigns (upon request at the Land Office of the first party at St. Paul, and the surrender of this Contract), a deed conveying said premises, in fee simple, with the ordinary covenants of warranty; reserving, however, a strip of land one hundred feet wide, to be used by the first party for a right-of-way or other railroad purposes, where the main line or any branch of its railroad is laid over the premises.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctualy and upon the strict terms and times above limited, and likewise to perform and complete all and each of the agreements and stipulations aforesaid, strictly, and literally, without any failure or default, the time of payment being of the essence of this contract, then the party of the first part shall have the right to declare this contract null and void, and all right and interest hereby created or then existing in favor of the second party, or derived under this contract, shall utterly cease and determine and the premises hereby contracted shall revert to and revest in said first party, (without any declaration of forfeiture, or act of re-entry, or without any other act by said first party to be performed, and without any right of said second party of reclamation or compensation for moneys paid and improvements made) as absolutely fully and perfectly as if this Contract had never been made.

And it is further stipulated, that no assignment of
24 the premises shall be valid unless the same shall be endorsed hereon, or permanently attached hereto, and countersigned by the first part-, (for which purpose this Contract must be sent to this office) and that no agreements or conditions, or relations, between the second party and her assigns or any other person acquiring title or interest from or through her shall preclude the first party from the right to convey the premises to said second party or her assigns, on the surrender of this agreement and the payment of the unpaid portion of the purchase money which may be due to the first party.

In witness whereof, The Sioux City and Saint Paul Railroad Company hath hereunto caused its corporate seal to be affixed and hath caused these presents, in duplicate, to be signed by its proper officer, and the second party hath hereunto set her name and the said Trustees have hereunto set their names, in the day and year above written.

ELIAS F. DRAKE,
President Sioux City & St. Paul Railroad Company.

[Seal]

GEO. A. HAMILTON,
Secretary Sioux City & St. Paul Railroad Company.

Countersigned and approved:

W. P. Jewett,
W. A. Petterson,
E. McMurtin,
Dan'l Morfitt,
Witnesses.

Amherst H. Wilder,
Elias F. Drake,
Trustees.

ELMIRA KNEPPER, Purchaser.
By W. H. Knepper, her Atty.

Indorsed: Copy No. 493. Agreement Sioux City & St. Paul R. R. Co., with Elmira Knepper for N. W. 1/4 of Sec. 9, Town. 95, Range 42. P. O. Sheldon, County of O'Brien, State of Iowa.

25

EXHIBIT "C."

12-11,893
"T"
W. K. M.

Department of the Interior
General Land Office.

S. S. M.
W. O. C.
J. V. W.

Washington, D. C., July 20, 1899.

John A. Sands,
vs.
Elmira Knepper.

N. W. 1/4, Sec. 9, T. 95, N. R. 42 W.
O'Brien County Lands.

Register and Receiver,
Des Moines, Iowa,

Sirs: I am in receipt of your letter of April 19, 1897, transmitting the record in the case of Elmira Knepper vs. John A. Sands, involving N. W. 1/4 Sec. 9, T. 95, N. R. 42, W., and have duly considered said record.

This tract was within the primary limits of the grant to the State of Iowa, of May 12, 1864, to aid in the construction of a railroad from Sioux City to the south line of the State of Minnesota, which grant was conferred by the State upon the Sioux City & St. Paul Railroad Company; it is opposite to the constructed portion of the road and was patented to the State for the use of said railroad June 17, 1873.

In suit instituted by the United States aganst said company to recover title to said lands to the Government, because of being in excess of the [quality] the company was entitled to for length of road completed the Supreme Court of the United States on October 21, 1895 (159 U. S. 349) decided favorably to the Government, thus restoring the title to it.

In view of said decision instructions were issued by order of the Department, Nov. 18, 1895, directing that the lands thus recovered be opened to entry after ninety days published notice, and that parties claiming to be purchasers of any of said lands from the company should be notified to present their claims within such period under the act of March 31, 1887.

26 By your notice published pursuant to said instructions the time for the opening of the lands to entry was set for February 27, 1896. On January 15, 1896, Elmira Knepper filed her application to make proof for said N. W. 1/4, also notice to make said proof on March 20, 1896, before your office; which was duly published.

On January 21, 1896, Mr. Sands also filed application to make proof under said act for the same tract with notice that the same would be made before your office April 29, 1896.

On March 10, 1896, Mr. Sands also filed homestead application for said land alleging settlement on the tract in 1884.

Your office also reports that on February 27, 1896, the following persons filed application to enter the land under the homestead laws.

William A. Richards, Frank Freeman, Ely McQuiston, William E. Wait and James V. Ryan.

The case came on hearing under notice of Mrs. Knepper March 21.

Elmira Knepper appeared by W. H. Knepper, and her attorney W. P. Jewitt, John A. Sands appeared by his attorneys J. F. Conrad and King and Stearnes.

Mr. Jewitt filed special power of attorney from Elmira Knepper to William H. Knepper, to make application for patent under act of March 3, 1887, for the land in dispute, executed January 9, 1896; also copy of a general power given by her to him, dated September 7, 1880, to transact all business for her.

After taking testimony on behalf of Mrs. Knepper the hearing was adjourned to the 29th of April under notice of Sands for hearing; this hearing was held on May 1, 1896.

The testimony is to the effect that Mr. Knepper and Mrs. Elmira Knepper who is his wife, resided upon the S. W. 1/4 Sec. 4, adjoining the land in dispute since 1880; that prior to and in 1884, Mr. Knepper pastured his stock on part of the land in dispute but did not in any manner reduce the land to possession as the stock of other people also pastured there; that

about May of 1884, one Weaver commenced to break on
27 the land, broke a small piece, that in August, 1884, the claimant John A. Sands bought Weaver's breaking and claim and took possession of the tract, built a house on it and commenced residing there; that Knepper was aware of his occupancy and had in fact advised Sands to go into possession as (he said) the Weavers had no claim; also that he saw Sands building his house and made no objection; that in 1885 Sands built an addition to the house, and has ever since resided there with his parents and has broken and cultivated about 100 acres of the land; that June 21, 1887, William Knepper as attorney for Mrs. Elmira Knepper, made a contract of purchase with the railroad company whereby he purchased in her name the land in controversy for $2120 and on which payments have been made amounting in all to $1015.68; that in 1888, Mr. Knepper fenced in about 20 acres in the Northwest part of the tract immediately adjoining his home farm and which embraced the part he had had in immediate use for pasturage and has used said 20 acres since that time for pasturage except an acre or two which he used for a hog yard, and on which he had built a hog house; that Knepper made no effort to disturb Sands in his possession or to dispute his right to the land until after the purchase from the company; and that he then endeavored by court proceedings to have him ousted but without success; that Sands has always declared that he would not purchase the tract from the railroad company although advised to do so; but would hold it for a homestead; that he made an application to homestead the tract in 1885 which, however, was rejected; that Mrs. Knepper knew he was living on and claiming the land before she purchased; that she had seen him on the place and made no objection and that his improvements are worth $1750.

Upon this evidence you decided in the favor of Sands and rejected all other applications. From this decision Knepper alone appeals.

All the applicants claiming adverse to Sands (except Knepper) having failed to appear after due notice of your decision, their applications stand rejected and their cases are closed.

As to Elmira Knepper and Sands, the 4th Section of the Act of March 3, 1887, provides relief for those persons who had in good faith purchased land from the railroad companies which had been patented or certified thereto, but which in sub-
28 sequent proceedings should be found not to be within the purview of the grant.

In the construction of this statute it has been repeatedly ruled by this office that good faith is not manifested where at the time of the purchase, the purchaser is aware that the land is settled upon and occupied by one claiming the tract to be public land and is holding it under the public settlement laws with the intention to enter the same should it become subject to entry.

Now, in the case at bar the testimony clearly proves that Mrs. Elmira Knepper, the purchaser, residing on the adjoining land with her husband, was fully aware that Sands was residing on the land as early as 1884, had seen him there and had made no objection to his occupancy so that she had personal knowledge of his settlement and claim at the time of the purchase. So also Mr. Knepper her attorney in the matter of the purchase had full knowledge of Sand's claim long prior to and at the date he made the purchase for his wife.

It must therefore be held that Mrs. Elmira Knepper was not bona fide purchaser under the law.

Knepper advances an occupancy by himself of the tract at the time Sands settled but this consisted solely in pasturing his cattle on a part of the land but as this was done also by other parties with their cattle, and as he did not reduce the tract to actual possession and made no claim to the land under the settlement laws we give no weight to it. Further, whatever personal rights he could possibly have claimed by it, they were abandoned by him when he purchased the tract for his wife.

Improvements made afterwards were his wife's and not his, and these were very small, consisting of some fencing and a hog house.

I see no error in your decision and affirm the same. Notify the parties in interest hereof and allow the usual time for appeal.

Mrs. Knepper will be notified by this office through her resident attorney.

Very respectfully,

BINGER HERMANN, Commissioner.

J. D. S.

29 EXHIBIT D.

Department of the Interior.

Vol. 27 Washington, April 24, 1900.
No. 482
W. V. D.

John A. Sands,
vs.
Elmira Knepper.

The Commissioner of the General Land Office,

Sir: Elmira Knepper appeals from the decision of your office of July 20, 1899, rejecting her application for a confirmatory patent to the N. W. 1/4 of Sec. 9, Tp. 95, N., R. 42 W. O'Brien County, Iowa, and within the limits of the Des Moines, Iowa, land district, under the provisions of the act of March 3, 1887 (24 Stat. 556).

The title of this tract and others was declared to be in the government by the decision of the Supreme Court, of the United States, on October 21, 1895 (159 U. S. 349) and pursuant to instructions from your office, it was, with other tracts,—the disposition of which was controlled by said decision,—restored to entry on February 27, 1896, after allowing claimants under said act of March 3, 1887, time to give notice of their intention to offer proof in support of their claims. The local office, upon the evidence submitted at the hearing between the respective applicants, decided in favor of John A. Sands, allowing his application to make homestead entry for the tract, filed March 10, 1896, and upon appeal your office affirmed this decision; these concurring decisions are evidently based upon the occupancy, residence and cultivation of the tract by Sands before its purchase from the railroad company by Mrs. Knepper, on June, 1887, through her husband, William H. Knepper, acting as her general attorney in fact. The prior possession and residence of Sands was known to the Kneppers, who resided upon an adjacent tract and Knepper advised Sands that he could go upon the lands without purchasing the claim of one Weaver, who formerly claimed the tract because the latter had no right to the tract.

30 Sands paid Weaver fifty dollars for the possessory right of the latter, and has expended about two thousand dollars in the improvements of the land, including the breaking of a considerable portion of it; no objection seems to have been made to Sand's occupancy of the premises until after the purchase of the tract from the railroad company, was made on behalf of Mrs. Knepper, after which Knepper, during the temporary absence of Sands, fenced in about twenty acres the possession of which she has retained ever since. Sands

claimed the tract as a homestead, and made application to make an entry therefor in 1885, about the time he established his residence thereon; but this application was rejected. He did not seek to purchase from the railroad company, although he could have done so before Mrs. Knepper's contract was executed. Mrs. Knepper agreed to pay the railroad company $2120 for the tract, and has made payments thereon amounting to $1015.68. She also agreed to pay the taxes on the land, which she had done from year to year, the same aggregating between $200 and $300. There is nothing to show that the purchase was not made in good faith relying upon the title of the railroad company under the outstanding patent issued for its use and benefit June 17, 1873, long before Sands' settlement on the tract. The possession of Sands at the time of Mrs. Knepper's purchase is relied on as making the purchase one in bad faith. But by the recent Departmental decision in the case of Tow vs. Manley (29 L. D. 504) it was, in effect, held that the fact that a tract had been settled upon prior to the date of the purchase thereon from the railroad company, but after the patenting of the tract to the State for the use and benefit of the company, on the faith of which the purchase was made, there being no entry or other claim to the land at the time of the patenting, does not effect the bona fides of the purchaser or prevent a confirmation of title in the purchaser under section 4 of the act of March 3, 1887. This case controls the disposition of the parallel case at bar.

That Knepper before Mrs. Knepper's purchase from the railroad company, told Sands that Weaver a former settler, had no claim upon the land and that he, Sands, could take the same without buying Weaver out, does not constitute an es-
31 toppel on the part of Knepper, or his wife for whom he was acting as attorney in fact. Sands evidently did not rely upon this advice, and it could not have influenced his settlement upon the tract, as he purchased Weaver's claim, which seems to have been based upon nothing substantial. The land was not then subject to entry, having been withdrawn therefrom on account of the grant to the railroad company and the patenting of the land to the State as trustee for the company. No advantage was taken of Sands, as at any time for about two years after his settlement he could have purchased from the company had he chosen to do so.

The decision of your office is reversed; the application of Elmira Knepper for a confirmatory patent to the tract in dispute will be allowed, subject to her compliance with the law and the regulations governing such applications. The papers in the case are herewith returned.

Very respectfully,

(Copy) E. A. HITCHCOCK, Secretary.

32 (Copy)

F. W. C.
S. V. P.

Department of the Interior.

27-248
W. V. D.

Washington, July 9, 1900.

John A. Sands,
vs.
Elmira Knepper.

The Commissioner of the General Land Office,

Sir: With your office letter of the 30th ult. was transmitted a motion filed on behalf of John A. Sands, for review of departmental decision of April 24 last (not reported) in which the application of Elmira Knepper for a confirmatory patent under the provisions of Section 4, of the Act of March 3, 1887 (24 Stat. 556) to the N. W. 1/4 of Sec. 9, T. 95 N. R. 42 W., Des Moines land district Iowa, was sustained, and the conflicting homestead application of John A. Sands was rejected.

Said motion alleges nothing but what was fully considered at the time of the rendition of the decision under review and no reason appears for disturbing the conclusion arrived at in said decision. The said motion is accordingly denied and is herewith returned for the files of your office.

Very respectfully,

E. A. HITCHCOCK, Secretary.

Indorsed: No. 199 Equity. In the Circuit Court of the Northern District of Iowa, Western Division, in and for the Eighth Judicial District. John A. Sands, plaintiff, vs. Elmira Knepper, defendant. Petition. Filed March 18, 1901. A. J. VanDuzee, Clerk. By J. H. Bolton, Deputy.

33 And afterwards, to wit, on the 1st day of April, 1901, there was filed in the office of the Clerk of said Court in said cause, a Subpoena in Chancery and Marshal's return of service thereon, which is in words and figures following, to wit:

United States of America,
Northern District of Iowa,
Western Division—ss.

The President of the United States to Elmira Knepper,

We command you and each of you that you appear before the Judge of the Circuit Court of the United States for the Northern District of Iowa, at Sioux City, on the first Monday of May it being the 6th day of May next (A. D. 1901), to answer

to the bill of complaint of John A. Sands this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced you by default.

To the Marshal of the Northern District of Iowa, returnable to the May Rule day, it being Monday the 6th day of May A. D. 1901.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the U. S. at Sioux City this the 18th day of March A. D. 1901, and of the Independence of the 125th yr.

[Seal] A. J. VANDUZEE,
Clerk U. S. C. C., Northern District of Iowa.
J. H. Bolton, Deputy.

Memorandum: The within named defendant is notified that unless she enters her appearance in the Clerk's office of said Court at Sioux City aforesaid on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against her as confessed, and a decree entered thereon accordingly.

[Seal] A. J. VANDUZEE,
Clerk U. S. C. C. Northern District of Iowa.
By J. H. Bolton, Deputy.

34 (Marshal's Return): This writ came into my hands for service on the 19th day of March, A. D. 1901, and I served the same on the within named Elmira Knepper, on the 21st day of March, 1901, by delivering a true copy of the same to Elmira Knepper, at 4 M. S. W. Archer, in the County of O'Brien, and State of Iowa, Edward Knott, U. S. Marshal. J. A. Tracy, Deputy. Marshal's fees, expenses, 1.49; service, $2.00; $3.49.

Indorsed: No. 199. Equity Subpoena in Chancery. Circuit Court of the United States in and for Northern District of Iowa. John A. Sands vs. Elmira Knepper. Returnable to Rule Day the first Monday in May A. D. 1901. A. J. VanDuzee, Clerk. Filed April 1, 1901. A. J. VanDuzee, Clerk. J. H. Bolton, Deputy.

And on the 6th day of May, 1901, there was filed in the office of the clerk of said court in said cause a Demurrer to the Bill which Demurrer is in words and figures following, to wit:

In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

John D. Sands, Plaintiff,
vs.
Elmira Knepper, Defendant.

Demurrer of Elmira Knepper, Defendant.

This defendant, not confessing all or any of the matters in the Bill of Complaint contained to be true, as therein set forth, doth demur to said Bill for that the same does not state such a cause, nor contain any matter of equity, entitling the complainant to any relief against this defendant.

Wherefore she prays the judgment of the Court whether she shall be compelled to further answer said bill and further prays to be dismissed with her costs.

J. S. STRUBLE, Atty. for Defendant.

I, J. S. Struble, of counsel for the defendant in the above cause, do hereby certify that the foregoing Demurrer to the Bill of Complaint is in my opinion well founded in law.

J. S. STRUBLE.

35 Affidavit.

United States of America,
Northern District of Iowa,
Western Division—ss.

I, W. H. Knepper, being duly sworn, on my oath do depose and say that I am the husband of the above named defendant, Elmira Knepper, and am also her duly authorized agent, in virtue of a written Power of Attorney, to conduct and transact her business in relation to the land described in the Bill of John D. Sands, plaintiff in the above entitled cause: That I have been such authorized agent since prior to June 21st, 1887, on which date the said Elmira Knepper purchased of the Sioux City & St. Paul Railroad Company the Northwest quarter of Section nine (9) township No. ninety-five (95) North, of Range No. forty-two (42) West of the fifth P. M., being the land involved in the above entitled suit; that since prior to the purchase of said land, I have had active and continuous charge of the interest and business of my said wife in connection therewith, and personally know more about the litigation in relation thereto between my said wife and the plaintiff, than does my said wife, the defendant, and therefore I am more competent to make this affidavit than she; and I depose and say that the

Demurrer to be filed in this cause by defendant's counsel is not to be filed therein for the purpose of delay.

WM. H. KNEPPER.

Sworn to before me and subscribed in my presence by the said W. H. Knepper this 6th day of May A. D. 1901.

[Seal] J. H. BOLTON,
Deputy Clerk of U. S. District Court.

Indorsed: No. 199. District Court of United States, Northern District of Iowa, Western Division. John D. Sands, plaintiff, vs. Elmira Knepper, defendant. Demurrer. Filed May 6, 1901. A. J. VanDuzee, Clerk. By J. H. Bolton, Deputy.

36 And afterward to wit on the 30th and 31st days of August, 1901, the following proceedings were had by said court in said cause, as appears of record on pages 70 and 71 of Record 3 of the record of said court, to wit:

John A. Sands,
vs. No. 199 Equity.
Elmira Knepper.

And now on this 30th day of August A. D. 1901, it being the time heretofore fixed therefor, the above entitled cause came on to be heard upon the demurrer of defendant to the bill of complainant filed herein, complainant appearing by M. B. Davis and J. H. King, his solicitors and defendant appearing by Struble & Struble, and thereupon the arguments of counsel is commenced and continued during the day.

John A. Sands,
No. 199. vs. Equity.
Elmira Knepper.

And now on this 31st day of August A. D. 1901, this cause again coming on for hearing, the arguments of counsel are resumed upon the demurrer to the bill, and being concluded the said demurrer is fully submitted and taken under advisement.

37 And on the 6th day of September, 1901, there was filed in the office of the Clerk of said Court in said cause, a written Opinion of the Court, which Opinion is in words and figures following, to wit:

In United States Circuit Court in and for Northern District of Iowa, Western Division.

John A. Sands,
vs. Equity.
Elmira Knepper.

Submitted on General Demurrer to Bill.

M. B. DAVIS,
KING & STEARNS,
for Complainant.
STRUBLE & STRUBLE,
for Defendant.

SHIRAS, District Judge.

The conclusions reached in the case of Manley vs. Tow substantially cover the vital points presented in this case and following the ruling announced in Manley vs. Tow, the demurrer to the bill is overruled.

Filed September 6, 1901. A. J. VanDuzee, Clerk.

38 The opinion heretofore referred to as being filed in case of Lottie M. Manley vs. Andrew Tow & Ellen Tow, is in words and figures following:

In United States Circuit Court Northern District of Iowa, Western Division.

Lottie M. Manley,
vs. Equity.
Andrew Tow and Ellen Tow.

Submitted on General Demurrer to the Bill.

J. H. KING,
M. B. DAVIS,
for Complainant.
W. P. JEWETT,
B. L. WICK,
CARR & PARKER,
for Defendants.

SHIRAS, District Judge.

This case and a number of other now pending in this court arise under the provisions of the act of Congress of March 3, 1887, providing for the re-adjustment of land grants in aid of railways and for the forfeiture of the unearned portions of such grants, the contest being between settles on the land claiming

under the homestead laws of the United States and purchasers from the Sioux City & St. Paul Railway Company. The bill herein filed sets forth at length the acts of Congress, of the General Assembly of the State of Iowa, of the Land Department, and the decisions of the Courts, State and Federal, which affect the disposition of the land described in the bill, to wit: The North West quarter of Section Twenty-five, Township Ninety-five North, of Range Forty-one West, situated in O'Brien County, Iowa.

39 By the recitals in the Bill it is shown that under date of May 12, 1864, Congress passed an Act granting to the State of Iowa for the purpose of aiding in the construction of a line of railroad from Sioux City to the South line of the State of Minnesota, every alternate odd numbered section of land within ten miles of the line of proposed road, with authority to the secretary of the Interior to select indemnity lands from the odd numbered sections within twenty miles of the lines named. In the same act Congress also granted to the State for the benefit of the McGregor Western Railway Company, lands to aid in the construction of the line of railway from McGregor westerly. It is declared in the Act (13 Statutes at Large 72) that the lands granted shall be subject to the disposal of the Legislature of Iowa, for the purposes named in the Bill and for no other, it being further provided that the lands granted should be disposed of by the State in the manner following, namely: "When the governor of the said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the Secretary of the Interior shall issue patents to the State in like manner for like number, * * * and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time made as aforesaid, additional sections shall be patented, as aforesaid, until said roads, or either of them are completed when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other. * * * Provided further that if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted to the State of Iowa for the purpose of securing the completion of the said road within such time, not to exceed five years and upon such terms as the state shall determine; and provided further, that said lands shall not in any manner be disposed of or incumbered, except as the same are patented under the provisions of this act, and should the state fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States."

40 By the provisions of the act of April 3, 1866, adopted by the General Assembly of Iowa, the Sioux City and St. Paul Railroad Company was authorized to undertake the construction of the line from Sioux City to the Minnesota State line, and that Company, beginning the construction at the State line, built the road to the Town of LeMars in Plymouth County, but no further, ceasing the work of construction in 1872. By an act approved March 16, 1882, the General Assembly of Iowa declared, "That all lands, and all rights to lands, granted or intended to be granted to the Sioux City and St. Paul Railroad Company, by said acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said railroad company by a compliance with the conditions of said grant, be, and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said Railroad Company."

By an act approved April 2, 1884, the General Assembly enacted that all lands and rights to lands resumed by the act of 1882, were relinquished and conveyed to the United States, the Governor of the State being directed to certify to the Secretary of the Interior all lands patented to the State, but which had not been patented to the Sioux City and St. Paul Company by the State, it being however provided, "That nothing in this section contained shall be construed to apply to lands situated in the counties of Dickinson and O'Brien." The reason for this exception of the land in the named counties is to be found in the fact that the Chicago, Malwaukee & St. Paul Company had succeeded to the rights of the McGregor Western Company, the original beneficiary of the grant contained in the act of Congress of May 12, 1864, in aid of the line from McGregor Westerly, and as such successor had built the road up to and past the point of intersection with the Sioux City line and the Milwaukee Company was asserting a claim to the lands in O'Brien and Dickinson Counties on the ground that it had not received the full amount of lands it had earned and that upon the failure of the Sioux City Company to earn the same they
41 would pass under the grant to the McGregor Western.

It may be said in passing that this claim on part of the Milwaukee Company was denied by the ruling of the Supreme Court in the case of The Company vs. The United States, 159 U. S. 372, it being therein held that lands granted in aid of the line from Sioux City to the State line, but not earned by reason of the failure to construct the road between LeMars and Sioux City could not be claimed and held by the Milwaukee Company under the grant in aid of the line from McGregor Westward.

It may be further said that the rights of the companies in the lands within the overlapping limits of the grants at the place of intersection had been settled by the decision of the Supreme Court in the case of the Sioux City and St. Paul Railroad Company vs. The Chicago, Milwaukee & St. Paul Ry. Company, 117 U. S. 406, in pursuance of which a partition of the lands had been made and confirmed by a decree of the Circuit Court for the District of Iowa.

In 1890 a bill was filed in this court by the United States against The Sioux City and St. Paul Company for the purpose of adjusting the land grant under the provisions of the Act of Congress of March 3, 1887, and the case was carried to the Supreme Court, it being finally held by that Court that the Railway Company through its failure to complete the entire line to Sioux City, had not become entitled to claim all the lands embraced within the grants, but only the proportionate share based upon its completion of five sections of the road; that the facts showed that there had been patented to it by the State more land than it was entitled to and therefore the company was estopped from asserting any right or claim to the lands in O'Brien and Dickinson Counties which had been patented to the State, but had not been patented by the State to the Company, thus in effect holding that these lands were unearned through the failure to complete the road and as such they reverted to the United States under the terms of the original grant of 1864, as well as under the provisions of the act of 1887. The decision of the Supreme Court was under date of October 25, 1895.

42 Sioux City & St. Paul R. R. Co. vs. United States, 159 U. S. 349.

The Commissioners of the Land Office, by a letter dated November 18, 1895, called the attention of the Register and Receiver of the local office at Des Moines, Iowa, to the status of these lands, stating that the decision of the Supreme Court showed that the title thereof was in the United States, and the lands were subject to the disposal of the Department and to that end directed that a list of the lands be published with notice that the same would be subject to entry on a day to be named and that all persons making claim to any part thereof must give notice thereof and make proof thereof, and in cases of conflicting claims, the usual method of hearing the same would be followed. The complainant made claim to the land in dispute in this case under the provisions of the Homestead law, setting forth her settlement on the land, the continued occupancy and improvement thereof and giving proof of her qualifications to make the entry claimed. The defendant An-

drew Tow asserted a claim to the land under a contract of purchase made with the Sioux City and St. Paul Company under date of March 15, 1887. The contest thus initiated was heard in due form before the Register and Receiver of the local office and thence carried before the Commissioner of the Land Office, who found in favor of the complainant, giving her homestead entry a preference over the right asserted by Andrew Tow. The latter appealed the case to the Secretary of the Interior, who by an opinion filed Feb. 16, 1900 reversed the ruling of the Commissioner holding that under the proper construction of section four of the Act of Congress of March 8, 1887, the rights of Tow as a purchaser from the Railway Company were superior to those of complainant as a settler under the Homestead act and that Tow was entitled to a confirmatory patent for the land in dispute. The Secretary in his opinion states the facts to be that the complainant, Mrs. Manley with her husband, entered into possession of the land in July, 1885, at which time they established their residence thereon, which was continued until complainant was deserted by her husband from whom she obtained a divorce in 1890. That for a time after such desertion, complainant lived with her mother
43 on the adjoining land, but then resumed the actual occupancy of the premises, living thereon with her children; that the land had been cultivated and improved by the Manleys long prior to the date of Tow's contract to purchase and that when the contract of purchase was made Tow knew that the Manleys were in possession of the premises.

By the bill filed, the complainant challenges the construction placed by the Secretary of the Interior on the provisions of the act of 1887, claiming that it was an error of law to hold that the statute, as applied to the facts, gives the preference to Tow, whose contract of purchase was not made until after the date of the Act of March 3, 1887, and the purchase being of a tract of land which had never been conveyed to the Railway Company, and which had never been earned by the Railway Company under the terms of the grant of 1864, and which was in the actual possession of complainant as a settler when the contract of purchase was entered into by the defendant.

The defendants interpose a general demurrer to the bill and in support thereof some question has been made in the argument, upon the point whether the controversy is within the jurisdiction of the court, under the rule recognizing the finality of the action of the land department in the disposal of the public lands. It is well settled that the conclusiveness of the decisions of the land department is confined to matters of fact, or as is said by the Supreme Court in Moore vs. Robbins, 96 U. S. 530, that as to the facts upon which the decision of the depart-

ment is based, in the absence of fraud or mistake, that decision is conclusive even in courts of justice, when the title afterwards comes in question, but that in this class of cases, as in all others, there exists in the courts of equity the jurisdiction to correct mistakes, to relieve against frauds and imposition, "and in cases where it is clear that those officers have, by a mistake of the law, given to one man the land which on the undisputed facts belonged to another, to give appropriate relief."

The allegations in the bill do not charge that any fraud or imposition has been practiced upon the officers of the Land Department, and therefore the facts found by them cannot be questioned in this proceeding. The bill does charge, in effect, that the Secretary erred in his [his] construction of the act of 1887, and as a result of that error, he reversed the ruling of the Commissioner in favor of complainant and directed the issuance of a patent to the defendant and thus it is made plain that the controversy presents questions of law of which the court can rightfully entertain jurisdiction.

On behalf of complainant it is contended that under the peculiar language of the land grant, act of 1864, the State of Iowa had the right, upon the failure of the Company to complete the construction of the entire line of railway from Sioux City to the State line, to resume the unearned portion of the grant, and to regrant it for the purpose of securing the completion of the proposed road and therefore it must be held that when the State Legislature adopted the Act of 1882, resuming the unearned portions of the grant, it thereby adjusted this grant in such sense that it is excepted from the operation of the re-adjustment act of 1887, the first section of which directs the secretary of the Interior to immediately adjust "each of the land grants made by congress to aid in the construction of railroad and heretofore unadjusted."

While the action of the State undoubtedly affected the status of the lands and if the State, after the adoption of the resumption act of 1882, had regranted the unearned lands, specifically describing the same, to another company, thereby securing the completion of the line of railway, the rights of the latter might be measured by the action of the State, yet such regrant was not made and the United States continued to hold an interest therein, for under the terms of the grant of 1864, the unearned lands were to revert to the United States. Under these circumstances, it was open to the United States to ascertain the extent of the interest which the railway company had acquired in the lands embraced within the grant and to that end the Land Department could rightfully act under the power given

by the re-adjustment statute of 1887, which power and right was the basis of the suit brought by the Attorney General in the name of The United States against the Railway Company, and which, being carried to the Supreme Court, resulted,
45 as already stated, in the ruling that the company had no right to or title in the unearned lands. Without further consideration of this point it must be held that the rights of the adversary parties to this suit are to be determined by the construction of the act of 1887.

The first question to be considered is whether the provisions of section 4 of the act are applicable to persons who did not purchase lands from the Railway Company until after the adoption of the re-adjustment act of March 3, 1887. In the opinion filed by the Secretary of the Interior, it seems to be assumed that persons purchasing from the Railway Company after the adoption of the act are entitled to the same protection as are those who bought before the passage of the act.

Section 4 declares, "That as to all lands, except those mentioned in the foregoing section, which have been sold by the grantee company to citizens of the United States * * * the person or persons so purchasing in good faith his heirs, or assigns shall be entitled to the land so purchased * * *"

It will be kept in mind that one of the purposes of the Act of 1887 as declared in its title, was to provide "for the forfeiture of unearned lands" and the question presented by the facts of this case is whether Congress, when it undertook to provide the means whereby lands not earned under the terms of the grants and which, in all good faith, belonged to the United States, should be restored to the public domain it nevertheless intended to recognize the right of third parties to purchase the unearned lands from the defaulting companies, without providing any limit of time upon such right, and furthermore to give to such purchasers preference over actual settlers in possession of the lands so purchased.

In the case, already cited, of The Sioux City & St. P. Co. vs. United States, 159 U. S. 349, it is said: "If the terms of an act of Congress, granting public lands, admit of different meanings, one of extension and the other of limitation, they must be accepted in a sense favorable to the grantor, and if rights claimed under the government be set against it, they must be so clearly defined that there can be no [that there can be no] ques-
46 tion of the purpose of Congress to confer them, Leavenworth &c R. R. Co., vs. U. S. 92 U. S. 733-740.

Acts of this character must receive such construction as will carry out the intent of Congress, however difficult it might be

to give full effect to the language used if the grants were by instruments of private conveyances, Winona & St. Peter R. R. vs. Barney, 113 U. S. 618-625. Nothing is better settled, this court has said, than that statutes should receive a sensible construction, such as will effectuate the legislative intent, and if possible, so as to avoid an unjust or an absurd conclusion. Lau OW Bew vs. United States, 114 U. S. 47-59.

Giving effect to these rules of statutory interpretation, we cannot suppose that Congress intended that the railroad company should have the benefit of more lands than it earned."

The natural construction of the words used in the fourth section, to wit, "That as to all lands * * * which have been sold by the grantee company" would limit the application of the section to the lands that had been sold previous to the date of the act; if it be held that the section applies also to the lands sold after the act took effect, then by construction the rights of the grantees and purchasers holding under it are enlarged as against the rights of the grantor, to wit, The United States.

Furthermore if the provisions of Section four are held to apply to unearned lands sold after the adoption of the resumption act of 1887, then it will result in giving the preference to speculating purchasers over actual settlers, who have spent time, labor and money in the building up homes upon these lands and will be a complete reversal of the rule heretofore followed by Congress by the Land Department and by the Courts in dealing with the disposition of the public domain, to wit, to give the preference to the actual settler.

Thus in Lytte vs. Arkansas, 9 How 314, it is said, speaking of a claim under the pre-emption statute, "It is founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer, who is found in advance of our settlements, encounters many hardships
47 and not infrequently dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed 160 acres. That this is the National feeling is shown by the course of legislation for many years."

In Clements vs. Warner, 24 How 396, it is declared that "The policy of the Federal Government in favor of settlers upon public lands has been liberal. It recognizes their superior equity to become purchasers of a limited extent of land, comprehending their improvements, over that of any other person."

In Rector vs. Gibbons, 111 U. S. 276, it is said, "Whenever Congress has relieved parties from the consequences of defects

in their title, its aim has been to protect those, who, in good faith, settled upon public land and made improvements thereon. * * * There has been in this respect in the whole legislation of the county, a consistent observance of the rules of National right and Justice.'"

In Northern Pacific Railroad vs. Amacker, 175 U. S. 564, we find the statement that "It was long ago said by this court 'that the policy of the Federal Government in favor of settlers upon the public lands has been liberal. It recognizes their superior equity to become the purchasers of a limited extent of land, comprehending their improvements over that of any other person.' Clement vs. Warner, 24 How 394-397, and in a later case that 'The law deals tenderly with one who in good faith, goes upon the public lands with a view of making a home thereon.' Ard vs. Brandon, 156 U. S. 537."

In Moss vs. Dowman, 176 U. S. 413, the declaration is that "The obvious purpose of the pre-emption and homestead statutes of the United States is to secure to the actual settler the land upon which he has settled, and to give him the prior right to perfect title by purchase or continued occupation.

While undoubtedly under the provisions of the statutes and the regulations of the land department there are opportunities for a speculator to obtain title to public lands, it must be always remembered that in the eye of the public land laws of the United States the speculator is never an object of
48 favor. Pre-emption and homestead laws were enacted for the benefit of the actual settler, and to that end they should be construed and administered. The plaintiff herein contends that this tract of land was withdrawn for five years from settlement by mere successive entries in the land office, and could be kept thus withdrawn in the future indefinitely, while speculators wait such time as it becomes convenient to them to perfect title by settlement and occupation.

The proposition thus made is so offensive to the spirit and purpose of the land laws of the United States, that unless the statutes make such a result necessary from a true construction of their language it ought to be rejected. Again and again has this court affirmed the proposition that the settler is the beneficiary of the pre-emption and homestead laws of the United States."

A construction of the readjustment act of 1887 which would result in giving preference to persons whose claims originally after actual possession had been taken by the settler, would certainly be against the rule followed in all previous legisla-

tion, and in the judicial decisions based thereon and could not be justified unless the language of the act is so clear to that end, that the legislative intent to change the existing rule is clearly manifested.

I can conceive of no equity existing in persons purchasing portions of the unearned lands after the time, when Congress, by adopting the acts of 1887 had declared its purpose to forfeit the unearned lands, which calls for protection either against the United States or against actual settlers whose occupancy and improvements antedate the purchase from the delinquent railway company, and in view of the settled rules that in the construction of grants of the public domain in cases of doubt the interpretation most favorable to the government must be adopted, and as between rival claimants, preference will be given to the actual settler, there seems to be no reason calling for an enlarged construction of section four of the act, so as to extend its benefits to persons who have become purchasers of portions of the unearned lands after the date
49 of the adoption of the act. It is not meant by this that one purchasing after the adoption of the act may not have equities which will be recognized under some circumstances, but the view taken is that such a purchaser cannot avail himself of the provisions of section four, which gives to the purchaser of lands "which have been sold by the grantee company" a right to a patent relating back to the date of the original certification or patenting, and thus enables the purchaser to defeat the rights and equities of third parties coming into existence before the date of the purchase but subsequent to the date of the original certification or patenting to the Railway Company.

If the construction of section four thus indicated be the correct one, it follows that the Secretary of the Interior, erred in holding, as a matter of law, that the defendant Tow, who did not become a purchaser of the land in dispute until after the adoption of the act of 1887, was entitled to a patent under the provisions of section four, thus preferring him over the rights and equities of complainant which had attached to the land long prior to the date of Tow's purchase.

If, however, the construction indicated of Section four cannot be sustained, then we are brought to a consideration of the meaning of the words,—certified or patented by the United States to or for the use or benefit of any company,—for in section five of the act it is declared "That where any said company shall have sold to citizens of the United States * * * as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed

in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States * * * and thereupon patents shall issue therefor to the said bona fide purchasers, his heirs or assigns. Provided, that all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of
50 adverse claimants under the preemption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned; as to which excepted lands the said preemption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor."

The lands in dispute in this case are coterminous with the completed sections of the railway are of the odd numbered sections named in the original grant, but, in effect, have been excepted from the operation of the grant, by reason of the failure to construct the road from LeMars to Sioux City and hence it follows that if they have not been conveyed to or for the use of The Sioux City and St. Paul Company within the meaning of section five, the rights of the homestead claimant must be preferred over those of the purchaser from the company.

It will be remembered that the state of Iowa never conveyed or transferred to the railway or to any one for its use or benefit, the unearned lands in O'Brien and Dickinson Counties. These lands were patented to the State, it being recited in the patent that they were for the use and benefit of the Sioux City and St. Paul R. R. Co., but owing to the failure of the Company to complete the line from LeMars to Sioux City the State refused to patent them to the company and the legal title thereto never passed to the Company.

It is strongly contended on part of the defendant that the transfer to the State was a conveyance for the use and benefit of the company, but the true intent and meaning of this patent is to be derived from a consideration of its real purpose and of the authority with reference to this grant conferred by the Act of Congress of 1864 upon the Land Department and the State of Iowa. The Act of Congress did not name the Sioux City & St. Paul Company as the grantee or beneficiary of the donation thereby made. The act granted the lands to the State of Iowa as a Trustee to secure the building of a line of railway from Sioux City to the Minnesota State line, and it is expressly declared in the act that the lands are granted to the State, "Subject to the disposal of the Legislature of Iowa for

the purposes aforesaid and no other" and in the 4th Sec
51 tion of the Act it is declared, "That if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of said roads within such time, not to exceed five years, and upon such terms as the State shall determine and provided further, that said lands shall not in any manner be disposed of or be incumbered except as the same are patented under the provisions of this act."

It would have been a violation of the terms of the grant, if the State had conveyed these unearned lands to the company. The Secretary of the Interior had no authority to issue a patent of the lands to the State except for the purposes of and subject to the limitations contained in the grant and therefore the patent issued to the State must be construed in the light of the limitations contained in the Act of Congress which was the source of the authority of the Secretary with respect to these lands.

The statement in the patent that the lands named therein are conveyed to the State for the use and benefit of the Railway Company means only that the lands are conveyed to the State to be disposed of for the use and benefit of the Railway Company according to the provisions of the original grant. If the Company had earned the lands by completing the entire line of railway provided for in the grant, then it would have been the duty of the State to have conveyed the lands to the company, but it was equally the duty of the State not to convey the lands to the company except as they were earned under the terms of the grant and the company having failed to earn them it acquired no title or right, legal or equitable thereto, and it became the duty of the State to hold the lands for the benefit of the United States, to whom they reverted under the express provisions of the Act of 1864. Thus in the case of the Sioux City & St. Paul Company vs. United States, 159 U. S. 349, it is said by the Court, "Another contention is, that upon the issuing of the patents of 1872 and 1873, to the State for the
use and benefit of the railroad company the title vested
52 absolutely in the company, and the lands were thereby freed from restraint of alienation from conditions subsequent or from liability to forfeiture. In support of this contention reference is made to Bybee vs. Oregon & California Railroad, 139 U. S. 663, 674-7; Van Wyck vs. Knevals, 106 U. S. 360; Wisconsin Central Railroad vs. Price County, 133 U. S. 496; Desert Salt Co. vs. Tarpey, 142 U. S. 241; St. Paul & Pacific Railroad vs. Northern Pacific Railroad, 139 U. S. 116. But these are cases, as an examination of them will show, in

which the grant was directed to the railroad company, or in which the act of Congress required that the patents for the lands earned should be issued, not to the state for the benefit of the railroad company, but directly to the company itself. In the case now before us, the statute directed patents to be issued to the state for the benefit of the company. So that, until the state disposed of the lands, the title was in it, as trustee, and not in the railroad company. Schulenberg vs. Harriman, 12 Wall 44-59; Lake Superior Ship Canal &c Co. vs. Cunningham, 155 U. S. 372. See also McGregor &c Railroad vs. Brown, 39 Iowa, 655; Sioux City & St. Paul Railroad vs. Osceola County, 43 Iowa 318-321. In the case last named the Sioux City Company was relieved from the payment of taxes upon some of the lands patented to the State for its benefit, upon the ground that the legal title was in the state, and the lands for that reason were not taxable; the question is altogether different from what it would be if patents for these lands had been issued, or if the state had conveyed them directly to that company."

As I construe section five, it was intended thereby to give the preference to claimants under the homestead and the preemption laws, whose rights of occupancy were in existence at the date of the purchase from the railway company, as to all unearned lands, the title to which had not been conveyed to the Company or for its use to some third party.

To give the preference to the purchaser under the provisions of this Section, it must appear that at the date of the sale to him by the Railway Company the title to the land purchased had been conveyed by the United States to the Company
53 or to some one for its use and benefit. A conveyance by the United States of land to a third party as a Trustee, to be held by the Trustee in order to ascertain whether the railway company will earn the lands, it being the duty of the Trustee to reconvey the lands to the United States, if the conditions of the grant are not performed, is not conveyance to the Company or for its use within the meaning of section five of the readjustment act. The mere transfer of the land to the State as a Trustee did not vest a title thereto in the Railway Company, nor did the company ever occupy a position which enabled it to rightfully demand a conveyance of the lands from the State.

It is well known that the company made vigorous efforts to secure a conveyance of the lands from the state but wholly failed. In the case of The Sioux City and St. Paul Co. vs. The County of Osceola, 43 Iowa 318, a case arising under the same grant, it was held by the Supreme Court of Iowa, "That as the

performance of the conditions annexed to the grants by the state was left to the determination of the governor of the State, the railroad companies acquired no property in the land granted until the governor had issued a patent or certificate, as required by the statute showing that the corporations had earned the lands by the completion of the road, or part thereof, as prescribed by the conditions of the grant."

A person purchasing any part of these unearned lands from the company would be making a purchase from a grantor in whom the title had not vested as a matter of law and who had not created an equitable claim to the lands by performance of the conditions of the grant and by such a purchase the legal title would not pass to the purchaser, nor would he thereby become possessed of an equity superior to the actual settler who was in possession of the premises at the date of the purchase. If this is the correct construction of this section, then it follows that if the complainant was, at the date of the purchase by the defendant Tow, a bona fide occupant of the premises under the homestead laws, she is entitled to be preferred in the disposition of this land.

54 The only objection urged against the good faith of the occupancy upon which the complainant bases her claim, is that at the time such occupancy began, the land was withdrawn from entry by operation of the grant contained in the act of 1864, and the action of the Land Department based thereon, it being contended that she was a mere trespasser upon the premises.

This question is put at rest by the ruling of the Supreme Court in Lake Superior &c. Co. vs. Cunningham, 155 U. S. 354, wherein it is said, "But it is said by the counsel for the company that it was not a bona fide homestead claim because at the time the defendant entered upon the land he understood that it was a part of a railroad grant. * * * If he did, he knew that this railroad grant had been outstanding thirty-two years, that the land was to be restored to the government if the road was not completed within ten years, and that twenty-two years had passed since the time fixed by Congress for the completion of the road, and nothing had been done. His expectation was (and under the circumstances not an unreasonable one), that Congress would at some new time interfere to remove all this outstanding claim.

Under those circumstances, and in expectation of such removal, he enters upon the land. Can it be said that this entry and occupation was with the view of depriving anybody of the title, or that it was, as against the company a wrongful entry? If the construction contended for were accepted, it would ex-

clude from the benefit of the act any settler upon these lands who knew that the land he entered upon was within a railroad grant. But legislation respecting the public lands is to be construed favorably to the actual settler, and the construction contended for by the canal company seems to us too narrow.

If a party entering upon a tract, although he knew that it was within the limits of an old railroad grant, did so under the honest belief and expectation that the grant, if not technically extinguished by lapse of time, had remained so long unappropriated by any beneficiary that Congress would shortly resume it,—and in that belief determined to make for himself a home thereon, with a view of perfecting his title under the
55 land laws of the United States when the forfeiture should be finally declared, it must be held, we think, that he is, within the terms of this confirmatory act, a bona fide claimant of a homestead."

In the case at bar, the facts are that the Manley's settled upon the land in dispute in July, 1885, long prior to the date of the purchase by the defendant. There was therefore no claim to bar the right of entry by the Manleys, except such as might be asserted on behalf of the Railway Company under the grant of 1864, but the company had ceased work in 1872, and the state had declared a forfeiture of the unearned lands in 1882, and therefore the Manleys might well assume that the lands would in due time be restored to the public domain, as in fact they were and therefore, under the ruling in the case just cited, the complainant must be held to be a bona fide claimant of a homestead and as such to be protected under the provisions of Section five of the act of 1887.

Can it be said, under the facts of this case, that the defendant Tow is a bona fide purchaser within the meaning of the term as used in section five.

In the case of the United States vs. Winona &c. Railroad, 165 U. S. 463, the acts of 1887 and 1896 were under consideration and it was therein held that "Our conclusion is that these acts operate to confirm the title to every purchaser from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceeding of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the grants, although within the limits of the grants, excepted from their operation providing that he purchased in good faith, paid value for the lands, and providing also, that the lands were public lands in the statutory sense of the term, and free from individual claims."

In the case of the Winona Railroad vs. United States, 165 U. S. 433, it is said referring to the acts of 1887 & 1896, "It is essential to the protection of these statutes, that the party purchasing from the railroad company has no notice by any fact subsequently to and independent of the certification or patent of any defect in title. Such a purchaser cannot claim to be one in good faith if he has notice of facts outside of the records of the land department disclosing a prior right."

56

It is true that in the case just cited the court was dealing with a case wherein the rights of the settlers had attached before the right of the railway company under the grant, but the ruling is to the effect that the purchaser will be bound by notice of facts existing outside the records of the land department. In other words these acts do not change the ordinary rule that one who buys land, which at the time is in the actual and known possession of a third party, is chargeable with notice of the rights of such occupant.

Therefore when the defendant Tow entered into the contract of purchase with the railway company, which was on the 15th of March, 1887, he knew that the complainant was in the open actual possession of the land, using the same as a home for herself and her family. To defeat the rights of the complainant, he must become the purchaser of a title which was superior to and would defeat the rights of complainant under the homestead laws of the United States. The title he in fact bought was that of the railway company and at the time of the purchase this alleged title was of no avail against the rights of the complainant.

At the date of the contract of purchase, entered into by the defendant in 1887, the company had wholly ceased work on the road for fully fifteen years. The title to the land had never been conveyed to the company. In 1882 the state had resumed the unearned lands and the resumption act of 1887 had been adopted. It cannot therefore be said in any just sense, that the defendant was a bona fide purchaser of these lands, as against the rights of the complainant she being an actual settler and claimant under the homestead act.

It is the fact of actual settlement for the purpose of creating a home that creates the equity which is given priority in the disposition of the public domain, and this actual occupancy may be based upon a purchase from the railway company as well as upon an entry under the pre-emption or homestead laws of the United States. This was the principle recognized in the case of Linkswiler vs. Schneider, 95 Fed. Rep. 203. In that case the facts were that Schneider had

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purchased the land in dispute in that case from the railway company in 1883, had entered into the open occupancy thereof and had spent time, labor and money in building a home upon the premises and then in 1896, Linkswiler endeavored to make an entry of the land as a homestead in the land office at Des Moines, which entry was refused by all the departments in the land office, and the ruling was affirmed by this court. In the case now under consideration the settler claims under the homestead laws, but that difference does not weaken the weight to be given to the fact that the complainant was in the actual and known possession of the land when Tow endeavored to create a right thereto by entering into a contract of purchase with the railway company.

A person cannot be deemed to be a bona fide purchaser or a bona fide [entry-mean] under the homestead law, if at the time he makes his purchase from the railway company or attempts to make an entry in the land office, another person is in the actual open and known possession of the land. In other words, under such circumstances the would be purchaser or entry-man is charged with notice of the rights and equities of the actual occupant.

In the case at bar the conclusion reached is that as it is shown that when Andrew Tow made his contract of purchase with the railway company the complainant was in the actual and open possession of the premises to the knowledge of the defendant Tow, the latter cannot, as against the complainant, be deemed to be a bona fide purchaser of the premises, and furthermore that the land in dispute, being part of the unearned lands, had not been conveyed to the Railway Company, or for its use, within the meaning of section five of the act of 1887, and as the defendant did not enter into the contract of purchase until after the adoption of the act of 1887, and until after the unearned lands had been declared to be forfeited by the Legislature of Iowa, he cannot be held to be a purchaser in good faith in such sense that he is to be preferred over
58 the complainant.

If the conclusion- thus reached are well take-, it follows that the construction given to the provisions of the act of 1887, by the Secretary of the Interior cannot be sustained as a matter of law, and the allegations of the bill show that it was an error of law to award the confirmatory patent to the defendant. In other words the bill makes a case entitling the complainant to relief in equity against the erroneous issuance

of the patent to defendant and the demurrer must be therefore overruled.

Filed September 6, 1901. A. J. VanDuzee, Clerk.

59 And afterwards, on the 6th day of September, 1901, and the 1st day of October, 1901, the following proceedings were had by said court in said cause as appears of record on pages 72 and 84 of Record No. 3 of said Court, to wit:

John A. Sands,
No. 199. vs. Equity.
Elmira Knepper.

And now on this 6th day of September, 1901, the demurrer to the bill of complaint in the above entitled cause having been fully argued by counsel and duly submitted and taken under advisement by the court, and the court being now fully advised in the premises, finds that said demurrer should be overruled.

Accordingly it is the order and judgment of the court that the demurrer to the Bill of Complaint herein be and the same is hereby overruled, to which ruling the defendant duly excepts.

John A. Sands,
No. 199. vs. Equity.
Elmira Knepper.

And now on this 1st day of October A. D. 1901, leave is granted by the court to defendant to answer by the December Rule Day.

60 And on the 2nd day of December, 1901, there was filed in the office of the clerk of said Court in said cause, an election by defendant to stand on Demurrer, which is in words and figures following, to wit:

In United States Circuit Court in and for the Northern District of Iowa.

John A. Sands, Plaintiff,
vs.
Elmira Knepper, Defendant.

Election of Defendant to Stand on Demurrer.

And now comes the defendant in the above entitled cause and makes her election to stand upon the demurrer and the ruling thereon and requests an exception to such ruling to be given in the decree to be hereafter prepared and signed.

STRUBLE & STRUBLE,
Attorneys for Defendant.

Filed December 2nd, 1901. A. J. VanDuzee, Clerk; by J. H. Bolton, Deputy.

61 And on the 10th day of December, 1901, the following proceedings were had by said court in said case, as appears of record on page 135 of Vol. 3 of the record of said Court, to wit:

John A. Sands,
No. 199. vs. Equity.
Elmira Knepper.

This case coming before the court this 10th day of December, 1901, and it appearing that a demurrer to the Bill of Complaint had been heretofore filed, and after argument by counsel, had been overruled by the court, to which ruling the defendant at the time duly excepted, and the defendant having elected to stand upon the demurrer thus filed, and not to further plead in said cause, and the court, being fully advised in the premises, now finds that the complainant is entitled to the relief prayed for in his Bill of Complaint herein filed; it is therefore now ordered, adjudged and decreed that the complainant John A. Sands, is entitled to claim and hold the North West quarter of Section Nine (9) Township Ninety-five North, of Range Forty-two West of the 5th P. M., situated in O'Brien County in the State of Iowa, as a homestead by him duly entered in the year 1885, and occupied since that date and again by him entered in the United States Land Office at Des Moines, Iowa, on the 10th day of March, 1896, and that the right and title of said complainant to said land is paramount and superior to the title claimed by the defendant Elmira Knepper, through a purchase made by her from the Sioux City and St. Paul Railway Company under date of June 21, 1887, and it is therefore further adjudged and decreed that the confirmatory patent issued by the Land Department to the defendant Elmira Knepper, for said realty, based upon the purchase by her of said realty from the Sioux City and St. Paul Railway Company, is hereby annulled, canceled and set aside, and adjudged to be of no effect against the claim and title of the complainant and it is further adjudged and decreed that any and all title or right apparently vested in the defendant

62 Elmira Knepper by virtue of the patent so issued to her by the Land Department for the realty above described is held by said defendant in trust for the complainant herein as the real owner of said realty and the said Elmira Knepper is hereby directed and requirtd within a reasonable time to execute and deliver to the complainant a proper deed or instrument in writing, duly acknowledged releasing to complainant all apparent title held by her in said

realty, and the complainant is further authorized to hereafter move the court for such relief and orders as may become necessary to secure the transfer of the title to said realty to the complainant, jurisdiction over the case and over the defendant being retained for that purpose and it is further adjudged and decreed that complainant have and recover from the defendant the costs hereof, taxed at $36.39 and have execution therefor.

To which several rulings, orders, and decrees the defendant duly excepts.

O. P. SHIRAS, Judge.

63 And on the 17th day of March 1902 there was filed in the office of the Clerk of said Court, in this cause a Petition for Appeals; An Assignment of Errors, and a Bond for costs, which are in words and figures following, to wit:

In United States Circuit Court, Northern District of Iowa Western Div.

John A. Sands Plaintiff, Respondent
No. 199. vs. Equity.
Elmira Knepper Defendant, Appellant.

Appeal & Allowance.

The above named defendant, Elmira Knepper, conceiving herself aggrieved by the order and decree entered on December 9th, 1901, in the above entitled proceeding doth hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, and she prays that this, her appeal, may be allowed; that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

J. S. STRUBLE,
Attorney for defendant & Appellant Elmira Knepper.

LeMars Iowa, March 8, 1902.

And now to-wit this March 15, 1902 it is ordered that the appeal be allowed as prayed for.

O. P. SHIRAS, Judge.

Indorsed: U. S. Circuit Court Northern District of Iowa; John A. Sands vs. Elmira Knepper; Petition for appeal and allowance. Filed March 17, 1902. A. J. VanDuzee, Clerk.

64 In the United States Circuit Court in and for Northern District Iowa, Western Division.

John A. Sands Plaintiff, Respondent
No. 199. vs. Equity.
Elmira Knepper Defendant, Appellant.

Assignment of Errors.

Comes now the appellant, Elmira Knepper, and files the following assignment of errors, upon which she will rely upon her appeal from the decree made by this Honorable Court on the 9th day of December 1901.

1.

That the United States Circuit Court in and for the Northern District of Iowa, Western Division, erred in overruling the demurrer interposed by defendant, the plaintiff in eror, to the original complaint filed in said cause, because and upon the following grounds:

1. Because, as shown by said bill and particularly by paragraph thirteen thereof, the plaintiff in August 1884, tendered to the officers at the U. S. Land Office at Des Moines Iowa, a homestead filing for the land in controversy, with the necessary legal fees therefor, which said filing, as appears from said paragraph thirteen, was refused but the bill fails to aver that an appeal was ever taken from said ruling, by reason of which foregoing facts the appellant now alleges that there was an adjudication of all rights, claims and equities of the said John A. Sands, in and to said land or any part thereof.

2. Because it is shown by said bill, and particularly by paragraph sixteen thereof, that after the attempted homestead filing upon said land by said John A. Sands, as is set forth in division 1 of this assignment, and after the rejection of said attempted filing, the said John A. Sands voluntarily appeared before the United States Land Officers in Des Moines Iowa, in person and with counsel on the 20th day of March 1896, as a party to a contest case involving said land and the rights of said parties thereto, and, as shown by the bill, a trial
65 was had upon evidence taken and produced thereat in favor of said John A. Sands and this appellant in support of their respective claims, to wit, that of said John A. Sands as a good faith occupant of said land and one duly qualified to make homestead entry thereof under the homestead laws of the United States, and the appellant as a good faith purchaser of said land on June 21st, 1887 of the Sioux City and St. Paul Railroad Co., under and by virtue of an Act of Congress approved March 3rd 1887, it being further shown

by said bill that a decision was made by said land officers in favor of said John A. Sands, but that on appeal by the appellant herein from a later decision of the Honorable Commissioner of the General Land Office affirming the decision of the Land Officers, to the Honorable Secretary of the Interior, the said two prior decisions herein referred to were reversd and an order issued for a patent in favor of the appellant upon her compliance with the law and regulations governing such applications.

3. Because the bill fails to set forth any of the testimony taken in said contest cause from which it might, if an error had been committed cognizable by a court of equity, be made to appear to the court whether an error upon the facts shown by the evidence had been committed, or a mistake or fraud had been committed; and because the bill fails to point out and make plain any error of law or misconstruction of the Acts of March 3, 1887 and of March 2, 1896, or either or any part thereof, in their application by the honorable Secretary of the Interior, to the facts in said contest case.

4. Because as shown by said bill there was a full investigation of all claims and rights of the appellant and said John A. Sands in and to said land by the Land Department of the Federal Government with the final result that the purchase of said land by the appellant herein made June 21st, 1887, was declared to be in good faith and a patent directed to issue to her upon a compliance with the law and regulations governing such applications, which hearing and decision the appellant claims to have been a full and complete adjudication of
66 all questions which were, or might have been, presented by either the appellant, or said John A. Sands, at the hearing of said contest, and both of said parties are bound by said decision.

5. Because, it is not made to appear by the bill that a patent has ever isued to the appellant, but simply that one was ordered to issue upon her compliance with the law and regulations governing such applications and for aught that appears by the bill the appellant has not fully complied with such law and regulations and hence said land department still has control of the question of the issuance of the patent, under which circumstances a court of equity cannot hear and determine any question in relation to the issuance of the patent.

6. Because the court has no jurisdiction upon the allegations of the bill in relation to the issuance of the patent, the bill failing to show that the patent was issued or that the appellant has complied with the requirements of the decision of the honorable secretary of the Interior upon the questions as presented in said contest case.

7. Because the bill shows affirmatively that the appellant purchased said land in good faith and agreed to pay therefor a valuable consideration, a large part of which, as shown by the bill, was paid before the institution of this suit.

8. Because the bill fails to show, or to make any charge whatever of bad faith on the part of the appellant in this case in the purchase of said land from the railroad company.

9. Because by the Act of Congress approved March 3rd 1887, the appellant acting in good faith, and others acting in good faith in similiar cases had the legal right to purchase said land on the date on which the appellant purchased said land, to wit, June 21st, 1897.

10. Because by section one of Chapter 29 of the Acts of the 54th Congress passed at the first session thereof and approved March 2, 1896 it is provided among other things, that no patent to any lands held by a bona fide purchaser shall be vacated or annulled but the right and title of such purchaser is thereby confirmed.

67 11. Because by section 3 of the aforesaid Act of Congress approved March 2, 1896 it is provided in effect, that if, at any time prior to the institution of suit by the Attorney General of the U. S. to cancel any patent or certification of land erroneously patented or certified, a claim or statement be made to the Secretary of the Interior by any person claiming that such a person is a bona fide purchaser of such land by deed, contract or otherwise from or through the original patentee or corporation to which said patent or certification was made, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is invesigated in said Department of the Interior, and if it shall appear that such person is a bona fide purchaser then no such suit shall be instituted and the title of such claimant shall stand confirmed; and because the bills shows that the appellant in this case did make such claim of good faith purchase of the land in controversy to the Secretary of the Interior through the contest case set out in the bill prior to any such suit being brought and instituted by the Attorney General and that the appellant's claim to said land as such good faith purchaser was recognized and confirmed, therefore appellant's patent, or right to a patent was thereby confirmed.

12. Because there is no equity in the bill.

13. Because it is shown by the bill, in Exhibit "A" thereof, that among other things, the grant of Congress of May 12, 1864 of lands to the State of Iowa to aid in the construction of the two railroads mentioned therein was never adjusted

until the decision of the Supreme Court of the United States rendered Oct. 21, 1895 in a cause entitled the Sioux City and St. Paul Railway Co. vs. The United States.

14. Because as shown by the bill and particularly Exhibit "A" thereof, the honorable Commissioner of the General Land Office, prior to the institution of the contest cause set forth in the bill, decided and directed the applications of all
68 applicants to the land in controversy conferred no rights upon them and such applications were rejected and denied and no appeal therefrom was ever taken, so far as the bill shows, to the Secretary of the Interior.

15. In order that the foregoing assignments of error may be and appear of record, the appellant, Elmira Knepper, presents the same to the court, and prays that such disposition be made thereof as in accordance with law and equity and the statutes of the United States in such cases made and provided, and appellant prays a reversal of the decretal order and decree overruling her demurrer and rendering a decree against her as entered by said Court.

J. S. STRUBLE,
Solicitor for Appellant, Elmira Knepper.

Indorsed: In United States Circuit Court Northern District of Iowa Western Division. John A. Sands, Plaintiff, Respondent vs. Elmira Knepper Defendant, Appellant. Equity No. 199. Assignment of Error. Filed March 17, 1902. A. J. VanDuzee, Clerk.

69 Cost Bond.

Know All Men by These Presents: That we, Elmira Knepper, W. H. Knepper and W. H. Sleeper, of O'Brien County Iowa, are held and firmly bound unto John A. Sands, in the full and just sum of One Thousand Dollars to be paid to the said John A. Sands, his heirs, executors administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 8th day of March in the year of Our Lord, One Thousand Nine Hundred and Two.

Whereas, lately at the October Term Nineteen Hundred and one of the Circuit Court of the United States for the Eighth Judicial District, in the Northern District of Iowa, and the Western Division thereof, in a suit depending in said court between John A. Sands, plaintiff and the above bounden Elmira Knepper, defendant, decree was rendered against the said defendant and the said defendant has obtained an appeal

of said cause of the Honorable O. P. Shiras, the District Judge of the United States Court in and for said Northern District of Iowa before whom said cause was tried, on the demurrer of the defendant to the bill or petition of the said John A. Sands, and by whom said decree was rendered upon said demurrer and of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said John A. Sands, citing and admonishing him to be and appear [to be and appear] in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis Missouri, sixty days from and after the date of said Citation.

Now the condition of the above obligation is such that if the said Elmira Knepper shall prosecute said appeal to effect and answer all damages and costs, if she fail to make good her plea then the above obligation to be void, else to remain in full force and virtue.

ELMIRA KNEPPER, [Seal.]
W. H. KNEPPER, [Seal.]
W. H. SLEEPER, [Seal.]

Presence of
Luella Burton,
F. D. Meridith.
Approved by
O. P. SHIRAS, Judge.

70. State of Iowa,
O'Brien County—ss.

We do solemnly swear that we are residents and freeholders of the State of Iowa and we each for ourselves say that we are individually worth the sum of Two Thousand Dollars, beyond the amount of our debts, and have property liable to execution in this State equal to the sum of One Thousand dollars.

W. H. KNEPPER,
W. H. SLEEPER.

Subscribed in my presence and sworn to before me this 8th day of March 1902 by the said W. H. Knepper and the said W. H. Sleeper.

WM. H. WEBER,
Notary Public in and for said County and State.

Indorsed: Bond of Elmira Knepper in the case of John A. Sands Plaintiff, Appellee vs. Elmira Knepper, Defendant Appellant. Filed March 17, 1902. A. J. VanDuzee, Clerk.

71 The United States of America, To John A. Sands—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States for the Western Division of the Northern District of Iowa, wherein Elmira Knepper is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Circuit Court U. S. Northern District of Iowa.

Witness, the Honorable O. P. Shiras Judge of the Circuit Court of the United States for the Northern District of Iowa, this 17th day of March in the year of our Lord one thousand nine hundred and two.

O. P. SHIRAS,
United States District Judge, for the Northern District of Iowa.

No. 199 Eq. United States Circuit Court, Western Division of the Northern District of Iowa. John A. Sands vs. Elmira Knepper. Citation. Filed March 21st, 1902. A. J. VanDuzee, Clerk.

The within writ came into my hands for service on March 19, 1902, and I served the same personally on John A. Sands at his residence 5 miles East of Hospers in O'Brien County, Ia., on March 19, 1902 by reading the same to John A. Sands and handing to him a true copy of same.

Marshal's fees..... $2.00
Marshal's expenses.. 6.20

$8.20

Fees paid by Elmira Knepper.

EDWARD KNOTT, U. S. Marshal.
By J. A. Tracy, Deputy.

72 United States of America,
Northern District of Iowa.

I, A. J. VanDuzee, Clerk of United States Circuit Court in and for the Northern District of Iowa do hereby certify that the foregoing transcript contains full, true and complete copies of the record and proceedings in the case of John A.

Sands, Complainant vs. Elmira Knepper Respondent, No. 199 Equity, as full, true and complete as the original of the same remain of record and on file in my office.

I further certify that the Original Citation with the return of service endorsed thereon, is hereto attached and returned herewith.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said U. S. Circuit Court at my office in Dubuque Iowa this 16 day of April 1902.

Circuit Court
U. S.
Northern District
of Iowa.

A. J. VANDUZEE,
Clerk U. S. Circuit Court Northern District of Iowa.

Filed Apr. 23, 1902. John D. Jordan, Clerk.

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DARK PAGE BLEED THRU

(Appearance for Appellant.)

And on the twenty-eighth day of April, A. D. 1902, an appearance of counsel for appellant was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1751.

Elmira Knepper,
Appellant,
vs.
John A. Sands,

The Clerk will enter my appearance as Counsel for the Appellant.

I. S. Struble.

(Endorsed.): U. S. Circuit Court of Appeals, Eighth Circuit No. 1751. Elmira Knepper, Appellant, vs. John A. Sands, Appearance. Filed Apr. 28, 1902. John D. Jordan, Clerk. I. S. Struble, Le Mars, Iowa, Counsel for Appellant.

(Appearance for Appellee.)

And on the twenty-ninth day of May, A. D., 1902, the appearance of Mr. John H. King as counsel for appellee was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1751.

Elmira Knepper,
Appellant,
vs.
John A. Sands,

The Clerk will enter my appearance as counsel for the Appellee.

John H. King, Att'y.
Huron, S. Dak.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1751. Elmira Knepper, Appellant, vs. John A. Sands. Appearance.

(Appearances for Appellant.)

And on the twenty-eighth day of April, A. D. 1902, an appearance of counsel for appellant was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1751.
Minira Chapper,
Appellant,
vs.
John A. Gumbs,
The Clerk will enter my appearance as Counsel for the Appellant.
I. B. Stirrible.
(Endorsed.): U. S. Circuit Court of Appeals, Eighth Circuit No. 1751. Minira Chapper, Appellant, vs. John A. Gumbs, Appearance. Filed Apr. 28, 1902. John D. Jordan, Clerk. I. B. Stirrible, Le Mars, Iowa, Counsel for Appellant.

(Appearances for Appellee.)

And on the twenty-ninth day of May, A. D. 1902, the appearance of Jr. John H. King as counsel for appellee was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1751.
Minira Chapper,
Appellant,
vs.
John A. Gumbs,
The Clerk will enter my appearance as counsel for the Appellee.
John H. King, Att'y.
Marion, O. Dak.
(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1751. Minira Chapper, Appellant, vs. John A. Gumbs. Appearance.

Filed May 29, 1902. John D. Jordan, Clerk. John H. King, Huron, S. Dak., Counsel for Appellee.

(Appearance for Appellee).

And on the seventeenth day of November, A. D. 1902, the appearance of Mr. M. B. Davis as counsel for the appellee was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1751.

Elmira Knepper,
Appellant,
vs.
John A. Sands,

The Clerk will enter my appearance as counsel for the Appellee.

M. B. Davis.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit, No. 1751. Elmira Knepper, Appellant, vs. John A. Sands, Appearance. Filed No. 17, 1902. John D. Jordan, Clerk, M. B. Davis, Counsel for John A . Sands, Appellee.

(Argument Commenced.)

And on the tenth day of December, A. D., 1902, in the record of the proceedings in said Circuit Court of Appeals is an entry in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.
Wednesday, December 10, 190

Elmira Knepper,
Appellant.
vs.
No. 1751
John A. Sands,

Appeal from the Circuit Court of the United States for the Northern District of Io

This cause having been called for hear

Filed May 20, 1902. John B. Jordan, Clerk.
John H. Kline, Haynes, S. Pal., Counsel for Appellee.

(Appearances for Appellee).

And on the seventeenth day of November, A. D. 1902, the appearance of Mr. L. B. Davis as counsel for the appellee was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.
No. 1731.

Minta Knepper,
Appellant,
vs.
John A. Banks,
Appellee.

The Clerk will enter my appearance as counsel for the Appellee.
L. B. Davis.
(Endorsed): U. S. Circuit Court of Appeals,
Eighth Circuit, No. 1731. Minta Knepper,
Appellant, vs. John A. Banks, Appearance.
Filed No. 17, 1902. John B. Jordan, Clerk.
L. B. Davis, Counsel for John A. Banks,
Appellee.

(Argument Commenced.)

And on the tenth day of December, A. D. 1902, in the record of the proceedings in said Circuit Court of Appeals in an entry in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.

Wednesday, December 10, 190

Minta Knepper,
Appellant.
vs.
No. 1731
John A. Banks,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Io

This cause having been called for hear

ing in its regular order, argument was commenced by Mr. I. S. Struble in behalf of the appellant, but the hour of adjournment having arrived before the conclusion of the arguments, the further hearing of this cause was postponed until to-morrow morning.

(Order of Submission)

And on the eleventh day of December, A. D. 1902, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.
Thursday, December 11, 1902.

Elmira Knepper,
Appellant.
No. 1751. vs.
John A. Sands.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

This cause having been called this day for further hearing, argument was continued by Mr. John H. King and Mr. H. H. Davis for the Appellee and concluded by Mr. I. S. Struble for the appellant.

Thereupon the cause was submitted to the Court upon the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(Order to Certify Questions to Supreme Court, etc.)

And on the twenty-fifth day of February, A.D. 1903, in the record of the proceedings of said Circuit Court of Appeals is an order to certify certain questions to the Supreme Court in said cause, which said order and questions so certified are in words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.
Wednesday, February 25, 1903.

(Order of Submission)

And on the eleventh day of December, A. D. 1902, in the record of the proceedings of said Circuit Court of Appeals in an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.

Thursday, December 11, 1902.

Clerk's Exception.

Appellant.

vs. } No. 1734.

Peter A. Brady. }

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

This cause having been called this day for further hearing, argument was continued by Mr. John F. King and Mr. H. H. Davis for the appellee and concluded by Mr. I. S. Struble for the appellant.

Thereupon the cause was submitted to the Court upon the transcript of record from said District Court and the briefs of counsel filed herein.

(Order to Certify Questions to Supreme Court, etc.)

And on the twenty-fifth day of February, A.D. 1903, in the record of the proceedings of said Circuit Court of Appeals in an order to certify certain questions to the Supreme Court in said cause, which said order and questions so certified are in words and figures following, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit. December Term, 1902.

Wednesday, February 25, 1903.

Elmira Knepper,
Appellant.
No. 1751. vs.
John A. Sands.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

In this cause it is now here ordered that certain questions arising upon the record be and the same are hereby ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of Congress approved March 3, 1891, for the instruction of the said Supreme Court to this Court upon said questions.

Said Certificate is as follows, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.

Elmira Knepper,
Appellant.
vs.
John A. Sands,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

The United States Circuit Court of Appeals for the Eighth Circuit sitting at the City of St. Louis, Missouri, on the 28th day of February, 1903, certifies that from the record on file in the above entitled cause, which is pending in this Court on an appeal duly taken to review a decree rendered in said ~~Circuit~~ action in favor of John A. Sands, the Appellee, and is undetermined, the following facts are made to appear:

That by an Act of Congress approved May 12, 1864, it was "enacted in the Senate and House of Representatives of the United States of America, * * * that there be, and is hereby granted, to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such points as the said State of Iowa may select between the Big Sioux and the West Fork of the

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

In this cause it is now here ordered that certain questions arising upon the record be and the same are hereby ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of September twenty-second, 1922, for the instruction of the said Supreme Court in this cause upon said questions.

Said Questions is as follows, to-wit:

United States Circuit Court of Appeals.
Eighth Circuit.

Murry Thurpeer,
Appellant.
vs.
John A. Gerde,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

The United States Circuit Court of Appeals for the Eighth Circuit sitting at the city of St. Louis, Missouri, on the 26th day of February, 1923, certifies that from the record on file in the above entitled cause, which is pending in this Court on an appeal duly taken to review a decree rendered in said District Court in favor of John A. Gerde, the Appellee, and in which judgment, the following facts are made to appear:

That by an Act of Congress approved May 29, 1924, it was provided in the Courts and Judges of Procedure Act of the United States and Territories, = = = that there be, and is hereby created, in the State of Iowa, for the purpose of sitting in the construction of a District Court of the United States, in said State, to the south line of the State of Minnesota, at such points as the said State of Iowa may select between the Missouri and the West fork of the

Des Moines River, also in said State for the use
and benefit of the McGregor Western Railroad
Company, for the purpose of aiding in the constructi
of a railroad from a point at or near the foot of
Main street, South McGregor, in said State in
a westerly direction, by the most practicable route
on or near the forty-third parallel of North
latitude until it shall intercept the said road runni
from Sioux City to the Minnesota State line, in the
County of O'Brien, in said State every alternate sec-
tion of land designated by off numbers for ten
sections in width on each side of said road, but,
in case it shall appear that the United States
have, when the lines or routes of said roads are
definitely located, sold any section or part there-
of granted as aforesaid or that the right of pre-
emption or homestead settlement has attached to
the same, or that the same has been reserved by
the United States for any purpose whatever, ,
then it shall be the duty of the Secretary of the
Interior to cause to be selected for the purposes
aforesaid, from the public lands of the United
States nearest to the lines of sections above speci-
fied, so much land in alternate sections, or
parts of sections, designated by odd numbers,
as shall be equal to such lands as the United
States have sold, reserved or otherwise appropri-
ated, or to which the right of homestead settlement
or pre-emption has attached, as aforesaid, which
lands thus indicated by odd numbers and sections
by the direction of the Secretary of the Interior
shall be held by the State of Iowa for the uses
and purposes aforesaid, Provided, That the lands
so selected shall in no case be located more than
twenty miles from the lines of said roads, Pro-
vided, Further, That any and all lands heretofore
reserved to the United States by an act of Congress
or in any other manner by competent authority for
the purpose of aiding in any object of internal
improvement or other purpose whatever, be and the
same are hereby, reserved, and excepted from
the operation of this act; except so far as
it may be found necessary to locate the routes
of said roads through such reserved lands, in
which case the right of way shall be granted,
subject to the approval of the President of
the United States. . . . . .

. . . . . .

Sec. 4. And be it further enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid and no other. And the said railroads shall be, and remain public highways for the use of the government of the United States.

Sec. 4. And be it Further Enacted, That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely: When the Governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in good, substantial, and workmanlike manner, as a first-class railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed the ten miles aforesaid. When the Governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of land shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented, to the State for the uses aforesaid, and none other. Provided, That if the said McGregor Western Railroad Company, or assigns shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and do dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine; Provided Further, That if the said roads are not completed within ten years from their several acceptances of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and

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upon such terms as the State shall determine; And Provided Further, that said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this act, and should the State fail to complete said road within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

Sec. 5. And Be it Further Enacted, That as soon as the Governor of said State of Iowa shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act."

. . . . . .

That on April 3, 1866, the State of Iowa accepted said grant and on the same day, by appropriate legislative action, conferred that part of the grant made in aid of the construction of a railroad from Sioux City to the south line of the State of Minnesota, upon the Sioux City & St. Paul Railroad Company, a corporation duly organized and existing under and by virtue of the laws of said State, said grant being made upon the terms, conditions and restrictions contained in the aforesaid Act of Congress; that the said Railroad Company accepted said grant from the State and entered upon the construction of its road but only completed five sections of ten miles each, extending from the Minnesota State line southward to the town of Le Mars and received from the State of Iowa the amount of land it was entitled to by reason of the construction of such part of its road; that in a message to the Legislature of the State of Iowa, delivered in January, 1882, the Governor of the State directed the attention of the Legislature to the fact that the Railroad Company aforesaid had failed to complete its road in accordance with the terms of the grant and advised the legislature of his refusal to convey any more lands to said Railroad Company because it had received all the lands that it was entitled to and recommended that appropriate

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gislative action be taken; that thereafter, March 16, 1882, the following act was adopt- by the Legislature of the State of Iowa, which s duly approved by the Governor:

"AN ACT, TO RESUME ALL THE LANDS AND RIGHTS NVEYED UPON THE SIOUX CITY & ST. PAUL RAILROAD MPANY, BY OR UNDER AN ACT OF CONGRESS APPROVED Y 12, 1864, TO LANDS NOT HERETOFORE EARNED BY ID COMPANY.

Whereas, by an Act of Congress approved y 12, 1864, entitled, 'An Act for a grant of lands the State of Iowa, in alternate sections to d in the construction of a railroad in said ate,' certain lands were granted to the State Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State, the south line of Minnesota, at such point as said State might select, between the Big Sioux d the west fork of the Des Moines River, which nt was made to, and accepted by, the State of a, upon the conditions, restrictions and qualifications therein named, and

Whereas, by an act of the General Assembly the State of Iowa, approved April 3, 1866, so h of the lands, interests, rights, powers and ivileges as were or might be conferred in pursance of said acts of Congress, to aid in the construction of the aforesaid road, were disposed of, nted, and conferred upon the Sioux City & Paul Railroad Company, and

Whereas, said Sioux City & St. Paul Company ly accepted said grant on the 20th day of Septber, A. D., 1866, but has failed to complete or use to be completed any road on the line adopted refor, from Sioux City to Le Mars, in said State Iowa, or any road in lieu therpof,

Be It Enacted by the General Assembly of State of Iowa:

Sec. 1. That all lands, and all rights to nds, granted or intended to be granted to the ux City & St. Paul Railroad Company by the d acts of Congress and of the General Assembly the State of Iowa, which have not been earned said railroad company by a complainse with the nditions of said grant, be, and the same are reby absolutely and entirely

resumed by the State of Iowa, and that the same bee and are absolutely vested in the said State as if the same had never been granted to said railroad company.

Sec. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Sioux City Journal newspaper published in the State of Iowa.
Approved March 16, 1882."

That thereafter by an act of the Legislature of the State of Iowa, which took effect April 2, 1884, the State relinquished to the United States all of its right, title and interest in the lands pertaining to the grant in aid of the Sioux City & St. Paul Railroad Company, which had been declared vested in the State by virtue of the act aforesaid, approved March 16, 1882, and authorized the Governor of the state to certify, to the Secretary of the Interior, a list of all lands which had been theretofore patented to the State to aid in the construction of the Sioux City & St. Paul Railroad Company, which lands had not been earned and had been declared forfeited to the State but said Act contained the provision "that nothing in this (act) contained shall be construed to apply to the lands situated in the Counties of Dickinson and O'Brien";.

It further appears that prior to the adoption of the Act of March 16, 1882, the State of Iowa, acting through its executive officers, had caused a computation to be made of the lands to which the Sioux City & St. Paul Railroad Company was entitled under the grant aforesaid, and of the lands patented to the State on that account and of the lands actually conveyed by the State to said Company and also caused a computation to be made of the lands pertaining to the grant held by the State, which had neither been conveyed to the Railroad Company or earned by it, and that upon such computation it appeared that said Railroad Company had received conveyances from the State for 322,412-81/100 acres of land, which was all that it was entitled to according to the terms of the grant and that the State still held the legal title to 85,457-41/100 acres of land pertaining

pensed by the State of Iowa, and that the same be and are absolutely vested in the said State as if the same had never been granted to said railroad company.

Sec. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Sioux City Journal newspaper published in the State of Iowa.

Approved March 16, 1882."

That thereafter by an act of the Legislature of the State of Iowa, which took effect April 3, 1884, the State relinquished to the United States all of its right, title and interest in the lands pertaining to the grant in aid of the Sioux City & St. Paul Railroad Company, which had been conferred and vested in the State by virtue of the act aforesaid, approved March 16, 1882, and authorized the Governor of the state to certify, to the Secretary of the Interior, a list of all lands which had been theretofore patented to the State to aid in the construction of the Sioux City & St. Paul Railroad Company, which lands had not been earned and had been declared forfeited to the State but said Act contained the provision "that nothing in this (act) contained shall be construed to apply to the lands situated in the Counties of Dickinson and O'Brien".

It further appears that prior to the adoption of the Act of March 16, 1882, the State of Iowa, acting through its executive officers, had caused a computation to be made of the lands to which the Sioux City & St. Paul Railroad Company was entitled under the grant aforesaid, and of the lands patented to the State on that account and of the lands actually conveyed by the State to said Company and also caused a computation to be made of the lands pertaining to the grant which had by the State, which had neither been conveyed to the Railroad Company or earned by it, and that upon such computation it appeared that said Railroad Company had received conveyances from the State for 382,418.91/100 acres of land, which was all that it was entitled to according to the terms of the grant and that the State still held the legal title to 85,457.09/100 acres of land pertaining

o said grant, no part of which had at that time
een earned by the Railroad Company or conveyed
o it or has ever since been earned; that the
ast named quantity of land so unearned and un-
onveyed consisted in part of the tract of land in
ontroversy in this action, to-wit: Section 9,
ownship 95, North of Range 42, West of the Fifth
rincipal Meridian, situated in O'Brien County,
owa.

It further appears that the tract of land in
ontroversy remained open and unoccupied until
bout one year subsequent to the passage of what
s termed the relinquishment act aforesaid of
pril 2, 1884, at which time it was settled upon
y John H. Sands, the appellee, who erected a
ouse and made improvements thereon of the value
f $1750., with a view of establishing a home-
tead in accordance with the laws of the United
tates and who has ever since resided upon said
and, claiming it as a homestead; that he made
n application to the proper land office to enter
t as a homestead, sometime in the year 1884,
ut his application was rejected, and he renewed
uch application on March 10, 1896, after the
ecretary of the Interior in a published circular
f date November 18, 1895, had declared the
and in controversy, and other like land, subject
o disposal by the land department of the United
tates.

It further appears that when the last ap-
lication to enter the land was made, his claim
as contested in the local land office by Elmira
nepper, the appellant in this case; that said
lmira Knepper asserted a right to the land in
irtue of a purchase of the same by her from the
ioux City & St. Paul Railroad Company, which
as made on June 21, 1887, and in virtue of
he provisions of the fourth section of the Act
f Congress making provision for the adjustment of
ailroad land grants and other purposes, which
as approved March 3, 1887 (vide 24 St. 556, c.
76); that the said Elmira Knepper had never, at any
ime, resided upon the land in controversy or
ultivated the same or in any manner attempted
o comply with the homestead laws of the United
tates for the purpose of obtaining a title to it
hereunder; that the controversy thus in-

said grant, no part of which had at that time been granted by the Railroad Company or conveyed it or has ever since been granted; that the said named quantity of land so unearned and unselected constituted in part of the tract of land in controversy in this action, to-wit: Section 9, township 83, North of Range 48, West of the Fifth Principal Meridian, situated in O'Brien County, [illegible].

It further appears that the tract of land in controversy remained open and unoccupied until [illegible] one year subsequent to the passage of what is termed the relinquishment act aforesaid of April 3, 1880, at which time it was settled upon [illegible] John H. Banks, the appellee, who erected a [illegible] house and made improvements thereon of the value of $1700.00, with a view of establishing a bona-fide residence in accordance with the laws of the United States and who has ever since resided upon said land, claiming it as a homestead; that he made application to the proper land office to enter said land as a homestead, sometime in the year 1884; that his application was rejected, and he renewed his application on March 10, 1886, after the [illegible] decision of the Interior in a published circular [illegible] date November 18, 1885. And defendant the said in controversy, and other like land, subject to disposal by the land department of the United States.

It further appears that when the land application to enter the land was made, his claim [illegible] contested in the local land office by Elmira Knapper, the appellant in this case; that said Elmira Knapper asserted a right to the land in virtue of a purchase of the same by her from the [illegible] Sioux City & St. Paul Railroad Company, which [illegible] made on June 23, 1887, and in virtue of [illegible] provisions of the Fourth section of the Act [illegible] Congress making provision for the adjustment of [illegible] land grants and other purposes, which approved March 3, 1887 (vide 25 St., 556, s. [illegible]); that the said Elmira Knapper had never, at any [illegible], resided upon the land in controversy or [illegible] the same or in any manner attempted to comply with the homestead laws of the United [illegible] for the purpose of obtaining a title to it [illegible]; that the controversy then in-

augurated as aforesaid between the parties to this action was tried and determined before the Register and Receiver of the local land office and resulted in a finding, by such officer, that John A. Sands, the appellee, by virtue of his settlement upon the land and continued residence thereon and cultivation thereof and his full compliance with the homestead laws of the United States, was entitled to a patent to said lands from the United States; that an appeal was taken from such decision by Elmira Knepper to the Commissioner of the General Land Office, who, on July 20, 1899, likewise decided that John A. Sands, the appellee, was entitled to a patent for said land; that a further appeal was taken by Elmira Knepper, to the Secretary of the Interior, who, on April 24, 1900, reversed the decision of the Register and Receiver and also the decision of the Commissioner of the General Land Office, and thereupon rejected the application of said Sands to enter the land as a homestead; that at the time the bill of complaint was filed in the present case, by John A. Sands against Elmira Knepper, the officers of the General Lands Office, acting in accordance with the decision of the Secretary of the Interior, were about to issue or had already issued a patent for the land in controversy to the said Elmira Knepper, solely in virtue of her alleged purchase of the land from the Sioux City & St. Paul Railroad Company on June 21, 1887, and in virtue of the fourth section of the adjustment act of March 3, 1887.

It further appears that from the bill of complaint that John A. Sands, the appellee, alleged that the action aforesaid, if taken, would be unlawful and contrary to law, wherefore he prayed that the commissioner of the General Land Office should be required to accept his proofs showing settlement upon and continuous cultivation of the land for the period of five years or more and that the patent to said land allowed to the defendant, Elmira Knepper, be either declared null and void or for a decree declaring that the defendant holds the legal title in trust for the appellee.

And the said Circuit Court of Appeals for the Eighth Circuit further certifies that the following questions of law, among others,

pursuant to aforesaid between the parties to the action was tried and determined before the Register and Receiver of the local land office and resulted in a finding, by such officer, that John Brede, the appellee, by virtue of his settlement upon the land and continued residence thereon and cultivation thereof and his full compliance with the homestead laws of the United States, was entitled to a patent to said lands from the United States; that an appeal was taken from such decision by Elmira Knepper to the Commissioner of the General Land Office, who, on July 20, 1899, likewise decided that John A. Brede, the appellee, was entitled to a patent for said land; that a further appeal was taken by Elmira Knepper, to the Secretary of the Interior, who, on April 24, 1900, reversed the decision of the Register and Receiver and also the decision of the Commissioner of the General Land Office, and thereupon rejected the application of said Brede to enter the land as a homestead; that at the time the bill of complaint was filed in the present cause, by John A. Brede against Elmira Knepper, the defendant, the Secretary of the General Land Office, acting in accordance with the decision of the Secretary of the Interior, were about to issue or had already issued a patent for the land in controversy to the said Elmira Knepper, solely in virtue of her alleged purchase of the land from the Sioux City & St. Paul Railroad Company on June 21, 1887, and in virtue of the fourth section of the adjustment act of March 3, 1887.

It further appears that from the bill of complaint that John A. Brede, the appellee, alleged that the action aforesaid, if taken, would be unlawful and contrary to law, wherefore he prayed that the commissioner of the General Land Office should be required to accept his proofs showing settlement upon and continuous cultivation of the land for the period of five years or more and that the patent to said land allowed to the defendant, Elmira Knepper, be either declared null and void or for a decree declaring that the defendant holds the legal title in trust for the appellee.

And the said Circuit Court of Appeals for the Eighth Circuit further certifies that the following questions of law, among others,

arise and are presented by the assignment of error in this cause; that the decision thereof is indispensable to a correct decision of the cause; and that to that end it desires the instruction of the Supreme Court upon the following questions and propositions of law, to-wit:

FIRST: In view of the provisions of the Act of Congress of May 12, 1864, by virtue of which the land in controversy was granted to the State of Iowa, did the action which was subsequently taken in manner and form aforesaid, by the governor and Legislature of the State of Iowa, operate as a final adjustment of the grant so far as the Sioux City & St. Paul Railroad Company was concerned and by virtue of its being so adjusted, exempt or except the grant in question from the provisions of the adjustment act of March 3, 1887?

SECOND: In view of the terms of the granting act of May 12, 1864, and the action subsequently taken in manner and form aforesaid by the State of Iowa acting through its Governor and Legislature, can Elmira Knepper, the appellant, be esteemed a purchaser in good faith or a bona fide purchaser of the land in controversy, within the meaning of the fourth section of the adjustment act of March 3, 1887, as against John A. Sands, the appellee, who was in the open possession of the land in controversy and had erected valuable improvements thereon in manner and form aforesaid when said purchase was made?

IN WITNESS WHEREOF, the undersigned Judges, Holding the said United States Circuit Court of Appeals for the Eighth Circuit, have hereunto set their hands this 25th day of February, A. D., 1903, at St. Louis, Missouri, and ordered that the foregoing certificates be filed in said United States Circuit Court of Appeals, and by the Clerk of said Court duly forwarded to the Supreme Court of the United States.

(Signed) Henry C. Caldwell,
Walter H. Sanborn.
Ames M. Thayer,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

(signed) Henry C. Caldwell,
Walter H. Sanborn,
Arba S. Thayer,
Judges of the United
States Circuit Court of
Appeals for the Eighth
Circuit.

United States Circuit Court of Appeals.
Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of Elmira Knepper, Appellant, vs. John A. Sands, Appellee, No. 1751. December Term, A. D., 1902, was duly filed and entered of record in my office by order of said Circuit Court of Appeals and as directed by said Court, the said Certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, this twenty-fifth day of February, A. D., 1903.

(Seal)

John D. Jordan,
Clerk United States Circuit
Court of Appeals for the
Eighth Circuit.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit, December Term, 1902. No. 1751. Elmira Knepper, Appellant, vs. John A. Sands. Certificate of Questions to the Supreme Court of the United States. Filed Feb. 25, 1903. John D. Jordan, Clerk.

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United States Circuit Court of Appeals.
Eighth Circuit.

I, John B. Jordan, Clerk of the United
States Circuit Court of Appeals for the Eighth
Circuit, do hereby certify that the foregoing
certificate in the case of Elmira Knepper, Ap-
pellant, vs. John D. Spade, Appellee, No. 1731,
September Term, A. D., 1902, was duly filed and
entered of record in my office by order of said
Circuit Court of Appeals and as directed
by said Court, the said Certificate is by me
transmitted to the Supreme Court of the United
States for its action thereon.

IN TESTIMONY WHEREOF, I hereunto subscribe
my name and affix the seal of said United States
Circuit Court of Appeals for the Eighth Circuit,
at the City of St. Louis, Missouri, this twenty-
fifth day of February, A. D., 1903.

(Seal) John B. Jordan,
Clerk United States Circuit
Court of Appeals for the
Eighth Circuit.

(Endorsed): U. S. Circuit Court of Appeals,
Eighth Circuit, December Term, 1902. No.
1731. Elmira Knepper, Appellant, vs. John
A. Spade. Certificate of Questions to the
Supreme Court of the United States. Filed
Feb. 25, 1903. John B. Jordan, Clerk.

(Clerk's Certificate)

United States Circuit Court of Appeals.
Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing seventy-three pages contain full, true and complete copies of all pleadings, proceedings, and record entries, in a certain cause wherein Elmira Knepper was Appellant and John A. Sands was Appellee, No. 1751. December Term, 1902, is full, true, and complete as the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this twenty-second day of April, A. D. 1903.

John D. Jordan,
Clerk of the United States
Circuit Court of Appeals for
the Eighth Circuit.

(Seal of United States
Circuit Court of Appeals,
Eighth Circuit.)